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REDACTED – FOR PUBLIC INSPECTION

April 4, 2014

REQUEST FOR CONFIDENTIAL TREATMENT

Via Hand Delivery
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW, Room TW-A325
Washington, DC 20554

REDACTED

Re: Verizon Florida LLC v. Florida Power and Light Company
File No.: EB-14-MD-003

Dear Secretary Dortch:

Enclosed for filing are an original and four copies of a Confidential and Public copy of Defendant Florida Power and Light Company's Response to Verizon Florida LLC's Complaint, with Exhibits for filing with the Commission. Florida Power and Light Company has marked the cover page of each confidential document with the legend "CONFIDENTIAL INFORMATION – NOT SUBJECT TO PUBLIC INSPECTION," and has marked the cover page of each public document with the legend "REDACTED – FOR PUBLIC INSPECTION."

Pursuant to Section 0.459(a) of the Commission Rules, 47 C.F.R. § 0.459(a), Florida Power and Light Company requests confidential treatment of the information that has been marked as confidential in the Response and Exhibits. Florida Power and Light Company has an obligation to maintain the information as confidential under federal law. This information, accordingly, is entitled to confidential, non-public treatment under the Freedom of Information Act ("FOIA") and the related provisions of the Commission's Rules. *See* 5 U.S.C. § 522; 47 C.F.R. §§ 0.0457, 0.0459.

Please date stamp the fifth copy of these Responses as having been received by your office and return it to the courier in attendance. Thank you for your assistance in this matter.

Sincerely,

Charles A. Zdebski
Counsel to Florida Power and Light Company

Enclosures
cc: Service List

REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

VERIZON FLORIDA LLC, Complainant, v. FLORIDA POWER AND LIGHT COMPANY, Respondent.	* * * * * * * * * * *	File No.: EB-14-MD-003

RESPONDENT FLORIDA POWER AND LIGHT COMPANY'S RESPONSE TO VERIZON FLORIDA LLC'S COMPLAINT

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Dated: April 4, 2014

SUMMARY

Verizon's Complaint cannot be considered in a vacuum. In what was clearly the start of a campaign to drive down the attachment rate it was contractually obligated to pay FPL, Verizon simply stopped paying that rate. It continued to enjoy the full benefits of its Joint Use Agreement with FPL, as it had for nearly four decades, but simply refused to pay for them. It paid 75% less.

This was followed by pretextual negotiations intended solely to extend the period of underpayment. They involved neither senior executives, legitimate decision makers nor genuine proposals from Verizon. As proof, when Verizon engaged [redacted] ten-months later, it introduced an entirely new cast of characters, but again no senior executives or legitimate decision makers. FPL's repeated requests for meetings between senior executives were systematically flouted. Understandably, the [redacted] process ground on, extending the underpayment period, but, without Verizon's meaningful participation, held no prospect of success.

When FPL had no choice but to initiate civil litigation to recover the underpayments, Verizon responded by advising the state court in a counterclaim that the state court, along with the FCC, had the authority under the 2011 *Pole Attachment Order* to determine if FPL's rate was fair and reasonable. That is, of course, untrue. The state court necessarily and pointedly rejected that argument and dismissed Verizon's counterclaim to that effect, advising Verizon to pursue its obvious administrative remedy.

Then and only then did Verizon reluctantly initiate this Complaint proceeding, essentially involuntarily. Of course, it did so by misrepresenting to the FCC that Verizon had complied with 47 C.F.R. § 1.1404(k). Prior to its filing, it neither outlined to FPL the basis for the current

Complaint nor offered to hold discussions at the executive level, both understandable prerequisites to filing.

With this as essential preamble, it is necessary for the FCC to be appropriately skeptical of both the legitimacy and sincerity of the Verizon application. FPL will demonstrate below significant flaws in Verizon's position and the bases for a reasoned, fair resolution of the issue between these two long-standing former contract partners.

The burden of proof is squarely on Verizon to show that the rate under the Agreement or any term of the Agreement is unjust and unreasonable. 47 C.F.R. § 1.1409(b). Measured against this burden, Verizon's invitation to the Commission to impose regulations retroactively on a longstanding commercial relationship and create unprecedented law must be declined for numerous reasons, including the following.

1. The Commission's new regulatory pronouncements in the *Pole Attachment Order* regarding ILECs cannot apply retroactively to the Agreement and attachments made thereunder.
2. The Due Process Clause of the United States Constitution prohibits retroactive rate adjustments in the present circumstances to the rate for attachments made under the Agreement.
3. The Commission's *Pole Attachment Order* does not require or suggest abrogating or rewriting the parties' joint use agreement and the contract terms applicable to Verizon's pre-existing attachments.
4. In all events, FPL's rates under the parties' joint use agreement are just and reasonable.

5. Even if the *Pole Attachment Order* applies retroactively and even if it applies to Verizon's pre-existing attachments, Verizon does not qualify for CLEC treatment and rates.

6. Even if, despite all of the foregoing, Verizon somehow qualifies for CLEC treatment, the applicable rate should be the "new" telecommunications rate of $9.31 per foot for 2011 and $9.78 per foot for 2012. These rates must be multiplied by the four feet of space contractually provided and used by Verizon, equaling 2011 and 2012 rates of $37.48 and $39.12, respectively. In addition, Verizon must compensate FPL for 40 years' of specific pole plant investment made in reliance on the parties' contract.

7. The relevant statute, 47 U.S.C. § 224, provides the FCC no jurisdiction over ILEC attachments.

In light of the foregoing arguments, FPL asks that the Commission deny Verizon's Complaint and the relief requested. FPL requests that the Commission instead enter an order determining that the rates arising from the parties' Joint Use Agreement are just and reasonable, and that the rates and terms under the Agreement remain in full force and effect regarding all joint use attachments made prior to the termination date of the Agreement until the parties reach a new agreement. The applicable rate for all such attachments shall be the rate specified under the Agreement, which for 2011 and 2012 are $35.465 and $36.225, respectively.

FPL remains willing to engage in meaningful settlement negotiations that involve each party's respective corporate executives and which strike a sensible balance that recognizes the value that joint use arrangements provide.

FPL, in sum, asks that the Commission order Verizon to abide by both the express terms of the Agreement it negotiated then enjoyed for decades and by the express terms of the *Pole Attachment Order*.

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ARGUMENT

I. Background

In 1975, FPL entered into a Joint Use Agreement (the "Agreement" or the "Joint Use Agreement") with Verizon's corporate predecessor, General Telephone Company of Florida (collectively with Verizon, the "Parties"), regarding the use of the Parties' poles. *See* Compl. Ex. 1.[1] For almost forty years, FPL and Verizon successfully and collegially operated under the Agreement.

On April 7, 2011, the Federal Communications Commission (the "Commission" or "FCC") issued its order in *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011) ("*Pole Attachment Order*"). Verizon saw an opportunity and the relationship changed.

The *Pole Attachment Order's* new regime became effective July 12, 2011. Even before that date, on June 27, 2011, Verizon sent FPL a letter seeking to revise the parties' 1975 Agreement by applying the *Pole Attachment Order* retroactively. It proposed to leave all of FPL's obligations in place. *See* Compl. ¶ 21. In other words, Verizon did not even await the effective date of the Commission's new rules before it sought to unwind a contract, pole attachment process and a successful commercial relationship predating the order by nearly thirty-seven years. *Id.*

Five months after the effective date of the *Pole Attachment Order*, on December 9, 2011, Verizon, seeking to intensify pressure, gave notice of its intention to terminate the 1975 Joint Use Agreement. *Id.* ¶ 23. The termination was to become effective in six months, on June 9, 2012, pursuant to the Joint Use Agreement. *Id.* Verizon, thus, by design, implemented a plan to

[1] This was last amended in relevant part in 1978. *See* Compl. Ex 2.

terminate the parties' decades-long relationship less than one year after the effective date of the *Pole Attachment Order.*

On February 28, 2012, FPL provided Verizon an invoice pursuant to the Joint Use Agreement for charges incurred for the 2011 calendar year. *Id.* Exhibit 6. Verizon made no payment.

The Agreement terminated on June 9, 2012. *Id.* ¶ 27. However, under the long-standing terms of the Joint Use Agreement, the parties were understandably obligated to continue to honor their obligations under the Agreement, with respect to existing attachments, unless and until a new agreement can be reached or those attachments are removed from the poles. *Id.* Exhibit 1 at 16-17. Verizon thus remained attached to FPL's poles without a new agreement in place, but made no payment for 2011 attachment fees.

[redacted] Verizon finally tendered a payment to FPL on July 23, 2012. While the payment was for 2011 attachment fees, it was partially[2] at a rate unilaterally contrived by Verizon, at approximately one-quarter of the parties' contractually agreed upon rate. *Id.* ¶ 26.

Desultory, *ad* hoc conversations ensued, hamstrung by the lack of participation by Verizon's senior management. FPL was willing to engage. Verizon was not. By April 13, 2013, however, after nearly a year without a joint use agreement, and in the face of Verizon's continued enjoyment of FPL's infrastructure and services without the required contractual payment, FPL was forced to initiate a state court collections action to obtain payment. Since

[2] Verizon paid the rate under the Agreement for the first half of 2011, but paid the low-end "new" telecommunications rate as of the effective date of the *Pole Attachment Order.*

Verizon had demonstrated no intention of having the FCC formally resolve the stalemate, FPL had no other choice.

FPL initiated the state court action on April 23, 2013. *Id.* Exhibit 11. Verizon's involvement there was consistent with its "negotiation" tactics. It moved to dismiss the complaint. It moved to transfer the case. When that was denied, it appealed that decision and moved to stay the case. When the stay motion was denied, it filed the same motion before the appellate court. Stay was denied there as well, and the denial of the transfer motion was affirmed. Verizon then filed a counterclaim asserting that the state court could apply the FCC criteria and make a determination what was a fair and reasonable rate. That counterclaim was appropriately dismissed, with the court advising Verizon that it was obligated to pursue its administrative remedy. Which is the only reason this matter is now in this forum. *Id.* ¶¶ 34-38.

On January 31, 2014, Verizon finally begrudgingly sought relief at the Commission.[3] Verizon filed its Complaint at the Commission:

- nearly three years after the *Pole Attachment Order*;
- over two years after giving notice of intent to terminate the Joint Use Agreement and approximately one-and-a-half years after the Agreement terminated;
- almost nine months after the state court litigation began; but,
- only 9 days after the state court dismissed Verizon's counterclaim

All the while, Verizon has remained on FPL's poles, despite steadfastly refusing to pay the fees agreed upon and due under the Agreement.

[3] Verizon claims that it must obtain relief at the Commission because FPL and the Florida state court confirmed that only the Commission can determine whether the joint use rate is just and reasonable. *Id.*, ¶ 39. Paradoxically – or perhaps expediently – Verizon is currently asking a different Florida state court to decide that same issue in Verizon's dispute with Tampa Electric Company. *See Tampa Elec. Co vs. Verizon Florida LLC*, Case No. 12-CA-016349 (Hillsborough Fla. Cir. Ct. 2012).

The Commission provided a Notice of Complaint to FPL on February 10, 2014. FPL's Response now demonstrates that Verizon's requested relief must be denied.

II. The FCC's New Regulatory Pronouncements Regarding ILECs Do Not Apply Retroactively to the Agreement and Attachments Made Thereunder

In a fashion that suggests it is simply for negotiating purposes, Verizon urges the FCC to determine that the *Pole Attachment Order* applies retroactively, giving the FCC the right to essentially re-write the Parties' existing contract. Aside from colliding with well-established law, that proposition defies commonsense in the context of this four decades-old agreement.

Supreme Court jurisprudence is clear that an administrative agency cannot take retroactive action, except in extraordinary circumstances, none of which are present here. "Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988); *Miller v. United States*, 294 U.S. 435, 439 (1935) ("The law is well settled that generally a statute cannot be construed to operate retrospectively unless the legislative intention to that effect unequivocally appears.") "By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *Bowen*, 488 U.S. at 208. "Even where some substantial justification for retroactive rulemaking is presented, courts should be reluctant to find such authority absent an express statutory grant." *Id.* (internal citations omitted) (citing *Brimstone R. Co. v. United States*, 276 U.S. 104, 122 (1928) ("The power to require readjustments for the past is drastic. It may reasonably exist in cases where the particular rate has been approved by the Commission after full hearing: it ought not to be extended so as to permit unreasonably harsh action without very plain words.") (quotations in original). "The

presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994). "A rule that has unreasonable secondary retroactivity—for example, altering future regulation in **a manner that makes worthless substantial past investment incurred in reliance upon the prior rule**—may for that reason be 'arbitrary' or 'capricious,' *see* 5 U.S.C. § 706, and thus invalid." *Bowen*, 488 U.S. at 220 (emphasis added).

The FCC's statutory authority to regulate pole attachments, containing not a hint of retroactivity, is the foundation for the *Pole Attachment Order*. It states in pertinent part:

> Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders.

47 U.S.C. § 224(b)(1). Nothing in this statute gives the FCC the ability to legislate or adjudicate retroactively. There is no "express statutory grant" to allow the FCC to do so. *See Miller*, *supra*. Accordingly, the *Pole Attachment Order* cannot apply retroactively.[4]

Moreover, the relevant rule changes resulting from the *Pole Attachment Order*, *see* 47 C.F.R. § 1.1402(d) and (e), clearly do not overcome *Bowen's* high bar that "administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen*, 488 U.S. at 208. The new rules merely state that an incumbent local exchange carrier may file a complaint and that the Commission may resolve such complaint on a case-by-case basis. A far more explicit pronouncement would be required before the rules be construed to

[4] It makes no difference whether the FCC could have regulated ILEC rates prospectively subsequent to the 1996 Act; the statute itself does not expressly authorize retroactive effect.

have retroactive effect, particularly in the as-applied circumstances of this present Complaint. Moreover, FPL has made substantial and decades long investments in pole plant to accommodate Verizon in reliance under the parties' joint use agreement. *See, infra,* Section IV.B; Kennedy Decl. at ¶ 19. If the Commission were to apply the new 47 C.F.R. § 1.1402(d) and (e) retroactively, it would do so "in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule." *Bowen*, 488 U.S. at 220.

In all events, it is wholly unclear from the *Pole Attachment Order* whether the Commission itself even intended that its new approach might have limited retroactive effect in certain circumstances. In the *Pole Attachment Order*, the Commission stated: "We therefore decline at this time to adopt comprehensive rules governing incumbent LEC's pole attachments, finding it more appropriate to proceed on a case-by-case basis." *Pole Attachment Order*, ¶ 214. Consistent with this approach, the Commission further stated that it "**is unlikely to find the rates, terms and conditions in existing joint use agreements unjust or unreasonable**. . . To the extent that an incumbent LEC can demonstrate that it genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement, the Commission can consider that as appropriate in a complaint proceeding." *Id.* ¶ 216 (emphasis added). The possibility that the Commission might entertain a complaint brought by an ILEC, falls far short of a clear expression of intent to apply the *Pole Attachment Order* retroactively. Moreover, Verizon certainly has demonstrated its intent not to be bound by an existing agreement, and, but for Verizon's studious reluctance to engage, there is no reason to believe that a new agreement cannot be achieved. Refusing to negotiate hardly brings an ILEC within the ambit of the FCC's remediation powers.

Taken together, the precedent and the *Pole Attachment Order* demand that the Parties' Agreement not be undone. The Commission cannot retroactively order a rate that applies to

attachments made pursuant to the terms of the Agreement. The rate for such attachments may change when and if Verizon agrees to negotiate a new agreement with FPL.

III. Constitutional Due Process Prohibits Applying Retroactive Rate Adjustments Under the Agreement or Attachments Made Thereunder

Legitimate due process concerns are a further and perhaps more significant impediment to Verizon's ambitious, but unsupported, application of the *Pole Attachment Order*. For example, in addressing whether the Commission's rules affecting rates are unlawfully applied in the pole attachment context such that the rule amounts to unlawful retroactive ratemaking, the United States Court of Appeals for the Eleventh Circuit has stated:

> A statute or administrative regulation does not operate retroactively merely because it applies to prior conduct; rather, a statute or regulation has retroactive effect if it 'would impair rights a party possessed when he acted, increase [his] liability for past conduct, or impose new duties with respect to transactions already completed.'

Georgia Power Co. v. Teleport Communications, 346 F.3d 1033, 1042 (11th Cir. 2003) (quoting *Landgraf*, 511 U.S. at 280). In the present case, application of the *Pole Attachment Order* so as to displace the mutually agreed upon rate under the parties' Agreement with the "new telecommunications rate" would impair FPL's rights under the Agreement to receive the bargained-for rate and potentially expose FPL to liability for refunds that FPL would not otherwise face. Accordingly, the relief requested would amount to unlawful retroactive ratemaking.

As stated in *Landgraf*: "The Due Process Clause . . . protects the interests in fair notice and repose that may be compromised by retroactive legislation; a justification sufficient to validate a statute's prospective application under the Clause 'may not suffice' to warrant its retroactive application." *Landgraf*, 511 U.S. at 253 (quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17, (1976)). The Commission based its decision to regulate ILEC attachments

to utility poles primarily on the Commission's belief that subsidizing the cost of these attachments will further the future deployment of advanced telecommunications services and therefore provide certain social welfare benefits. Even if that rationale is sufficient to sustain the Commission's decisions in the *Pole Attachment Order* on a going-forward basis, retroactive application of the *Pole Attachment Order* rate provisions in the instant case would violate the Due Process Clause. Engaging in retroactive ratemaking as Verizon requests would deprive FPL of fair notice and disturb the settled rights of the parties under the Agreement with respect to transactions that have already occurred. Therefore, the Commission cannot retroactively alter the rate applicable under the Agreement to attachments made thereunder. Verizon must pay the joint use rate until it negotiates a new agreement with FPL.

IV. The *Pole Attachment Order* Does Not Require or Suggest Abrogating or Rewriting the Parties' Joint Use Agreement or the Contract Terms Applicable to Verizon's Attachments Under The Circumstances

The Joint Use Agreement was comprehensively negotiated in arms-length fashion, requiring compromise by both parties. The agreement contains many interlocking parts. It is a bargained-for package of mutual rights and obligations under which the parties operated successfully and amicably for 37 years for long-lived assets that continue to provide the services contemplated by the parties when they negotiated the Agreement. Selectively rewriting one aspect of it in favor of Verizon is unjust and unreasonable and will have significant negative impact on FPL and its electric customers.

A. The Agreement is Valid and Enforceable and Longstanding

The Agreement went into effect in 1975. Compl. ¶ 6. It was last amended in 1978. *Id.* It is a valid contract that predates the *Pole Attachment Order* by 36 years. As such, it would be unreasonable and hopelessly beyond the expectations of the Parties for the Agreement to

somehow be subjected to FCC review in this complaint proceeding. In the Commission's own words:

> Although some incumbent LECs express concerns about existing joint use agreements, these long standing agreements generally were entered into at a time when incumbent LECs concede they were in a more balanced negotiating position with electric utilities, at least based on relative pole ownership. As explained above, we question the need to second guess the negotiated resolution of arrangements entered into by parties with relatively equivalent bargaining power. Consistent with the foregoing, the Commission is unlikely to find the rates, terms and conditions in existing joint use agreements unjust or unreasonable.

Pole Attachment Order at ¶ 216. "Nothing in the record suggests that **existing agreements** between incumbent LECs and electric utilities were entered into with the expectation that their provisions would be subject to Commission review." *Id.* n.654 (emphasis added). "We decline to apply our new interpretation of section 224 retroactively..." *Id.* ¶ 214 n.647.

In addition, Verizon has not – and cannot – demonstrate "that it genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement." *See Id.* ¶ 216. To the contrary, Verizon admits expressly that it could *and did* exercise **the ability to terminate** the agreement and was offered a new agreement by FPL. Kennedy Decl. at ¶ 43. It had the ability to obtain a new agreement, if it elected to negotiate on sensible commercial terms.

B. FPL and its Customers Have Invested Heavily in Reliance on the Agreement to the Benefit of Verizon

Verizon's Complaint conveniently ignores fifty-three years of economic history and the relationship between the parties. FPL has made substantial, necessary capital investments in setting joint use poles under the Agreement. Verizon's payments under the Joint Use Agreement partially offset in the cost of those investments. FPL's payments in turn offset in part Verizon's cost of those investments. To the extent this capital is not recovered through joint use rates, FPL's retail electric customers bear costs incurred for and on behalf of Verizon.

These costs include capital, operating and maintenance as well as other carrying costs, including for example, permitting costs, pre-inspection costs, make-ready costs, post inspection costs, insurance, and security. Kennedy Decl. at 19. Additionally, FPL had to obtain Rights of Way ("ROW") over real property. This involved multiple individual negotiations, contracts, land records research and recordings, with thousands of real property holders. Specifically, as explained in the Declaration of Thomas J. Kennedy, due to the joint-use relationship Verizon enjoys (and will continue to enjoy until the parties reach a new agreement to the contrary) the benefits of the following investments made by FPL:

1. To accommodate Verizon's needs, FPL installed poles 100 inches taller than the poles it needs to supply its own customers. These taller poles must also be installed deeper by one foot. These taller poles cost FPL substantially more than an FPL electric pole required to serve FPL's own customers. FPL uses these taller poles to accommodate Verizon's facilities as required under the Agreement. FPL also must acquire and pay for the appropriate easements that include Verizon and permit fees. Verizon avoids the capital outlays and ongoing expenses associated with pole ownership. Kennedy Decl. at ¶17.
2. Because FPL owns the poles, FPL maintains them. This includes regular periodic maintenance, replacement and relocation of poles at FPL's expense. FPL also has other expenses associated with pole ownership such as insurance, property taxes, administrative fees, costly ongoing inspection fees for poles, trimming fees, expensive storm repair, and personal injury, trespass and property damage claims associated with pole ownership. Kennedy Decl. at ¶ 20.

3. FPL installs poles that are designed to avoid "make ready" work that would otherwise be required in order to accept Verizon's attachments. Kennedy Decl. at ¶ 21.

FPL made these investments and concessions in reliance on the Agreement and Verizon honoring its payment obligations under the Agreement. FPL has accepted the onerous obligations of pole ownership. For a period of approximately forty years, Verizon obviously recognized and chose to avoid the cost and burden associated with pole ownership and resolutely determined that it made more business sense for Verizon not to own many poles. FPL's burden was balanced under the terms of the carefully crafted Agreement by the payments that Verizon agreed to make over time pursuant to the Agreement. This exchange of benefits, expenditures and payments made over time goes to the heart of the bargain that Verizon now seeks to simply cast aside.

In reliance on the promises made in the Agreement, for almost 40 years FPL has been making substantial investments in building and maintaining a strong and reliable system designed to accommodate Verizon's request for four feet of space. Verizon continues to enjoy the benefits of these substantial expenditures by FPL even after the termination of the Agreement. This termination does nothing to change the fact that FPL has incurred these substantial costs and will continue to incur these substantial costs to maintain a more expensive robust system of approximately 70,000 poles built to accommodate Verizon.

To protect the substantial investment and future obligations of the parties, the Agreement specifically provides that the terms of the Agreement will remain in full force and effect with respect to all poles jointly used by the parties at the time of the termination. Compl. Exh. 1 at 16-17. In critical infrastructure industries, such provisions provide commercial partners long-

term essential certainty for investment, deployment and maintenance decisions regarding their networks and infrastructure.

Thus, the rights and obligations of the parties regarding pre-existing infrastructure and attachments continue until a new agreement is reached and the services originally contemplated to be provided to FPL, Verizon and their customers when the Agreement was negotiated continue to be provided. In fact, in the case of Verizon, it is true that Verizon provides significantly *more* services today – such as "triple plays" – than when it originally attached its lines to FPL poles and therefore earns significantly more revenue proportionate to each joint use attachment. *See* www.verizonspecials.com/fios/fl (last visited April 4, 2014).

Now, after FPL has for several decades expended its own capital on these poles in reliance on the Agreement – and what it believed to be regulatory and investment certainty Verizon seeks to have the FCC declare the Agreement null and void. Verizon seeks a rate that ignores the economic and contractual realities of the Parties' historical relationship, the benefits it received and continues to receive and the expenses incurred by FPL. The FCC should decline to do as Verizon requests and instead should enforce the parties' contractual agreement for the existing attachments. The parties remain free to negotiate a new agreement with terms that in some way account for the historical investments made. FPL has offered to explore this with Verizon, but Verizon has declined.

Should the FCC exercise jurisdiction over this matter, nullify the Agreement and determine a new rate as proposed by Verizon, FPL's utility accounts will reflect a corresponding reduction in the offset to its revenue requirement. As a result, in the absence of Verizon's fair contribution and all other factors remaining equal, FPL customers will be required to pay for the costs by Verizon.

Simply put, each dollar of joint use rental revenue received or recognized results in a one-dollar decrease in FPL customers' retail revenue requirement. This is required by the Florida Public Service Commission ("PSC") pursuant to Order No. 8721, Docket No. 780326-PU, at 2 (Feb. 16, 1979) (quoting *GTE v. NY PSC*, 406 N.Y.S.2d 909, 911-12 (1978) ("The revenues that a utility receives from renting pole space to cable television operators must be taken into account by the Public Service Commission in fixing utility rates. Pole attachment revenues are properly used to offset the utility costs that are reflected in the rates paid by utility customers.")). Forcing FPL ratepayers to pay for Verizon's unpaid bills is even more unjust and unfair when one recognizes that the ratepayers will be paying for infrastructure built for Verizon's benefit.

Again, *Bowen* precludes the FCC applying its new regulatory interpretation in such an arbitrary and capricious manner. Rewriting the Agreement to allow Verizon to escape its financial commitment would involve "altering future regulation in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule . . . ." *Bowen*, 488 U.S. at 220. FPL installed taller poles for Verizon, poles which were paid for through FPL electric rates with the reasonable expectation under then-existing rules that the pole costs would be recouped through joint use revenues.

The Commission should reject the result sought by Verizon, thereby reaching a decision consistent with applicable precedent that respects parties' investments in relation to application of the Commission's rules. For example, in *Nat'l Ass'n of Indep. Television Producers & Distribs. v. FCC*, 502 F.2d 249, 253-54 (2d Cir. 1974), the court invalidated and delayed the implementation of the Commission's rules that gave only eight months' notice of a rule change because television companies had already invested with substantial reliance on the previous rule. *Compare New York Tel. Co. v. FCC*, 631 F.2d 1059, 1067-68 (2d Cir. 1980) (giving retroactive

effect to the Commission's order requiring the telephone company to file tariffs with the Commission only because the telephone company had not relied greatly on prior relevant rulings by the Commission regarding the subject).

C. The Agreement Applies until the Parties Complete a New Contract

The Agreement provides: "notwithstanding any such termination, other applicable provisions of this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination." Comp. Exh. 1 at 16-17 (Agreement, Article XVI). By virtue of Verizon's notice of termination, the Agreement expired on June 9, 2012. Compl. ¶ 7. It continues to govern Verizon's existing attachments on FPL's poles until the parties agree upon a new joint use agreement or arrangement. Verizon's unsubstantiated hyperbole aside, this does not mean that the rates and terms of the terminated Agreement apply in perpetuity. FPL has not claimed, will not claim and Verizon has identified no FPL claim that Verizon must forever pay the pre-existing rate. Rather, the rate and terms under the Agreement should apply until the parties complete a new joint use agreement incorporating the appropriate new terms and new rate. But rather than seek to negotiate a new rate, Verizon intends for the Commission to adjudicate a rate. FPL, on the other hand, continues to credit Verizon for FPL attachments on Verizon's poles at the agreed-upon rate in the Agreement. *See* Kennedy Decl. at 52.

Such provisions – maintaining the rights and obligations of parties that predate contract termination – are typical in joint use agreements. They protect the legitimate objectives of the parties in assuring the ongoing safety, reliability and viability of their critical infrastructure. Neither an electric utility nor a telecommunications carrier could allow itself to be in the untenable situation of having to remove, relocate and/or rebuild its network infrastructure at the

moment a contract ends. Large scale and long term investment in critical infrastructure requires stability and certainty.

In the present situation, in due course, Verizon will negotiate for the treatment, contract terms and rates it desires. The parties, through no fault of FPL, are not there yet. The Parties are at liberty to continue negotiations and FPL has consistently expressed a willingness to do so. A similar willingness on the part of Verizon, at the executive level, could result in a new agreement. Accordingly, not only would it be premature to conclude that Verizon cannot negotiate a new agreement, it would defy Commission precedent to order that the parties enter any specified agreement or agreement terms.

In *Cable Television Assn of Georgia*, 18 FCC Rcd. 16333, 16334 (2003), the Commission ruled that certain provisions of a proposed agreement between Georgia Power and *CTAG* were not just and reasonable. The Commission, however, did not declare which provisions should or should not be included in the parties' agreement but instead ordered the parties to negotiate a new agreement in good faith and provide updates to the Commission. *Id.* at 16349.

Here, until the parties negotiate a new agreement, the terms and rates of the Agreement continue to apply to Verizon's attachments. In the meantime, the parties should continue to negotiate a new agreement in good faith, consistent with the above jurisprudence. When they conclude that agreement, a new rate and new contract terms will apply to Verizon's attachments.

V. FPL's Rates Under the Joint Use Agreement are Just and Reasonable

Even if the Commission should decide that it lawfully can and should make a retroactive review of the terms and rates under the Agreement, the Commission must find FPL's joint use rates to Verizon to be just and reasonable. The Commission has retained the underlying

framework from its earlier pole attachment precedent in relation to the principles it applies in regulating rates for attachments under the *Pole Attachment Order*. Under this framework, recovery of the fully allocated cost sets the high end and the incremental cost sets the low end of the zone of reasonableness for cable and CLEC attachments. *Pole Attachment Order* ¶ 139.

Additionally, the Commission has indicated that it will use its "old" telecommunications rate as an indicator in considering ILEC complaints regarding attachment rates. The Commission stated: "As a higher rate than the regulated rate available to telecommunications carriers [*i.e.*, CLECs under Section 224] and cable operators [under the *Pole Attachments Order*], it helps account for particular arrangements that provide net advantages to incumbent LECs relative to cable operators or telecommunications carriers." *Id.* ¶ 218. These advantages include: "Significantly lower make-ready costs; No advance approval to make attachments; No post-attachment inspection costs; Rights-of-way often obtained by electric company; Guaranteed space on the pole; Preferential location on pole; No relocation and rearrangement costs associated with pole ownership; and Numerous additional rights such as approving and denying pole access, collecting attachment rents and input on where new poles are placed." *Pole Attachment Order* ¶ 216 n.654. The rates FPL charged under the Joint Use Agreement are well within the zone of reasonableness bounded by fully allocated and incremental costs, especially once one compares the additional services Verizon receives under the Agreement against the preceding list.

The rates under the Joint Use Agreement for 2011 and 2012 were $35.465 and $36.225, respectively which is based on the cost of two sizes of wood poles. These rates, however, were not fully allocated rates as is typical in many, if not most, joint use agreements. Indeed, if they were and they accounted for all of the costs that go into FPL providing Verizon joint use

attachment services, the rates would be substantially higher; for example, $45.45 for 2012. Spain Decl. at ¶ 18. This proves that the parties' agreed rate under the Joint Use Agreement is eminently just and reasonable. It is important to bear in mind that Verizon has the burden of proving that the agreed upon joint use rate is unjust and unreasonable. 47 C.F.R. § 1.1409(b). Verizon has not shown and cannot show that, in light of the fully allocated costs for joint use, the value of numerous specific joint use rights and the allocation and use of four feet of space, that the lesser rates of $35.465 and $36.225 are not just and reasonable.

The rates FPL would be permitted to charge Verizon under the old telecommunications rate for 2011 and 2012 would be $14.11 and $14.83, per foot of space used, respectively, using the presumptive average of five attaching entities. *See* Kennedy Decl. at ¶ 42. But these rates do not account for the four feet of space Verizon reserved and uses. Multiplying these rates by four yields $56.44 and $59.32 for 2011 and 2012, respectively. Spain Dec. at ¶¶ 23-24. Again, these amounts are in excess of the rates under the Agreement, thereby showing the rates under the Joint Use Agreement are just and reasonable. *See Id.* at ¶¶ 30-34.

VI. Even if the Commission Determines that the Pole Attachment Order Applies Retroactively and that it Applies to Verizon's Current Pole Attachments, Verizon Does Not Qualify for CLEC Treatment

A. Verizon Was Not and is Not in an Inferior Bargaining Position

Verizon's bargaining position, had it actually chosen to bargain, could not and cannot plausibly be characterized as "inferior." Verizon is the second largest telecommunications provider in the world. It is the fifteenth largest corporation in the world according to Forbes 500. CNN MONEY: FORTUNE 500 http://goo.gl/zoQznV (last accessed April 4, 2014). Verizon generated approximately $120 billion in revenue in 2013. *See* Verizon Communications Inc. Form 10-K *February 24, 2014.* In 2013, Verizon's assets were valued at $274 billion and the

company had approximately 176,800 employees. *Id.* Its stock is publicly traded on the New York Stock Exchange. It is disingenuous for Verizon to even suggest that it is in an inferior bargaining position to FPL. "Where parties are in a position to achieve just and reasonable rates, terms and conditions through negotiation," the Commission has held that "it generally is appropriate to defer to such negotiations." *Pole Attachment Order* ¶ 215.

Moreover, Verizon is free – and always has been free – to construct its own poles. Under Florida law, Verizon can lawfully install its own poles if need be. Public reports regarding its revenues and assets indicate that it certainly has the capital to do so and Verizon has never suggested it lacks the financial capacity to install its own poles.

In addition, to the extent that Verizon may claim that FPL is in a superior bargaining position because Verizon must have access to FPL's essential facilities, the converse is also true. FPL must have access to Verizon's essential facilities. Two regulated natural monopolies that both need access to one another's facilities can hardly be said to be in unequal bargaining positions, regardless of the percentage of pole ownership. FPL needs access to Verizon's percentage of the poles just as much as Verizon needs access to FPL's percentage of the poles.

There is only one reported pole attachment or joint use case that litigated, tried and decided the issue of whether an attacher such as Verizon is in an inferior bargaining position to an electric utility. *Pacificorp v. Comcast,* Utah Public Service Commission, Docket No. 03-035-28, Report and Order (Issued December 21, 2004). In the *Pacificorp* case, Comcast, the successor-in-interest to AT&T Corporation, claimed that it should be absolved of payment obligations under the parties pole attachment agreement because the agreement was unfairly forced upon Comcast. After hearing all of the evidence at trial, the Commission decided:

> **We decline, however, to view AT&T [through its cable affiliate] as a corporate David in a land of Goliaths.** Ms. Fitz Gerald testified [for Pacificorp]

> that she conducted negotiations over an extended period of time both in person and via email with at least two representatives of AT&T. Although these negotiations resulted in little if any change from the standard agreement put forward by PacifiCorp, they were negotiations nonetheless. Furthermore, they were negotiations **between two dominant and sophisticated corporations with access to teams of attorneys, as well as to this Commission. We therefore decline to view the product of such negotiation as a contract of adhesion.**

Id. at 35 (emphasis added).

AT&T cable/Comcast, it should be noted, owned no poles to use as bargaining leverage with Pacificorp and at the time was a far smaller corporate Goliath than Verizon is now. Indeed, Verizon was never a corporate David, not even in 1975. At that time, Verizon's predecessor, GTE, was the monopoly provider of telecommunications services in Manatee and Sarasota Counties and a portion of Charlotte County, the territory that Verizon serves today under the Agreement. GTE also had the opportunity to approach the Florida Public Service Commission to complain about the actions of a sister public utility, if necessary, long before this Commission exercised jurisdiction over joint use.

A comparison of the history of the parties' agreements over time demonstrates that Verizon was not in an inferior bargaining position when it negotiated the Agreement. First, the unequal pole allocation was created at the request and for the benefit of Verizon's predecessor. As reflected in the 1959 minutes between FPL and General Telephone Company of Florida, Verizon's predecessor, FPL wanted the parties to have equal pole ownership. Verizon's predecessor did not. Instead, GTE offered to pay a higher pole rental rate so that it would not be obligated to own and maintain an equal number of poles. *See* Exhibit A to Kennedy Decl. GTE also bargained for and received a number of key terms that when it negotiated the 1975 agreement. Compared to the 1961 joint use agreement that preceded the 1975 Agreement, Verizon obtained the following important contract modifications: (1) joint use payments required

to be made annually instead of monthly; (2) default payment triggered upon 60 days' past due status as opposed to 30 days; and (3) elimination of the default attachment which would have yielded a higher payment. *See* Kennedy Decl. at ¶¶ 8-11 & Exh. B; Compl. Exh. A.

Although Verizon could build its own poles today if it wished, it has generally declined to do so. This is presumably because Verizon enjoys the aforementioned benefits of the Agreement with FPL, at least with respect to its existing attachments, and is in the process of divesting its investment in pole plant, related maintenance and, indeed, wireline service. Recent proceedings in New York prove this to be the case. In fact, Verizon's efforts to decrease wireline service in New York became so egregious that New York State Attorney General Eric T. Schneiderman filed petitions to stop Verizon. In an April 25, 2012 petition to the New York State Public Service Commission, Attorney General Schneiderman sought to stop Verizon's efforts based on evidence that Verizon was disregarding landline service as more and more wireline phone customers switched to wireless service, thereby allowing Verizon to focus on its far more lucrative wireless service. *See* http://goo.gl/kFyNa3 (last visited April 4, 2014); Petition of Attorney General Eric T. Schneiderman to Modify the Verizon Service Quality Improvement Plan ("AG Schneiderman Petition"), available at http://goo.gl/VvrpWW (last visited April 4, 2014). The Petition went on to state:

> [T]elephone competition in New York is not robust, and at best can be characterized as a duopoly. Moreover, Verizon's own actions have demonstrated a disinterest in continuing to compete for wireline customers or invest in traditional telephone service. Instead, the company's resources and management focus is concentrated on its wireless affiliate, to the detriment of Verizon's wireline customers. For too many years, Verizon has steadily reduced the workforce needed for outside plant maintenance and telephone repair . . . .

AG Schneiderman Petition at 31.

Indeed, Verizon has a lower risk profile if it chooses to walk away. Because Verizon has executed a strategy over the years of owning a smaller percentage of poles, while FPL owns a larger percentage, Verizon is not financially wedded either to its own infrastructure or the rental payments from that infrastructure. FPL, however, cannot so easily walk away from its financial investment. Tellingly, the present facts prove this. Verizon is, in a real sense, in an excellent bargaining position.

Ultimately, Verizon has made the calculated determination that it is more financially beneficial to rent pole space than to own poles. This Commission should not award Verizon a windfall for executing on its own business plan.

B. Verizon is Not Similarly Situated to CLECs or Cable Companies and Receives Substantial Benefits Under the Agreement

Despite Verizon's movement towards less pole ownership, it still is not similarly situated to any CLEC or cable company because Verizon is FPL's joint use partner, for whom FPL has made substantial concessions as follows:

1. No Permit Application, Initial Fee, and/or Wait Time to Attach: Verizon is not required to receive advance approval from FPL before attaching. FPL's CLEC attachers must pay a fee, submit a permit application, and wait up to 148 days before installing their attachments. Verizon's wait time is zero days. This allows Verizon to beat its competitors to the market, which generates a value greater than the cost of the fee.
2. No FPL Post Inspection and/or Fee: Verizon's attachments are not subject to FPL inspection at the time of installation. In contrast, Verizon's competitors – the CLECs – are subject to a post-attachment inspection and fee. Also, Verizon's competitors and cable companies may incur unauthorized attachment fees, but Verizon does not.

3. Guarantee Verizon Four Feet of Space: The Agreement guarantees Verizon four feet of space on the bottom of the pole for its attachments. This space allocation allows Verizon to attach multiple facilities to any joint use pole. If four feet of space is not available on any given pole, FPL will replace it with a taller pole at no additional cost to Verizon. In contrast, if Verizon's competitors or cable companies want access when space is not available, FPL has no obligation to install another larger pole to permit access.
4. Best Real Estate on the Pole: Verizon enjoys the right to place its attachments on the lowest point in the usable space of the pole. This is the preferred spot on the pole. Access to the lowest point on the pole ensures the best possible access for both installation and maintenance all which in turn reduces Verizon's costs.
5. Replace of Poles to Accommodate Verizon: The Agreement requires FPL to replace a pole in certain circumstances in order to accommodate Verizon; none of Verizon's competitors or cable companies receive this benefit. In these cases, FPL pays the cost of the new pole and then invoices Verizon when the work is complete. As for Verizon's competitors, FPL has the legal right to refuse to replace a pole and expand capacity. If FPL does decide to expand capacity and accommodate one of Verizon's competitors, that company must pay for the pole change out in advance.
6. Rights Associated with Poles Abandoned by FPL: If FPL is abandoning a pole, Verizon has the right to take ownership. Verizon's competitors and cable companies must remove their attachments if FPL is abandoning a pole. Additionally, if a licensee other than Verizon is retiring its facilities, it must reimburse FPL for removal of its attachments.
7. Accommodate Verizon's Unique Requirements for Attachments at No Cost: FPL installs a ground wire pole-electrical grounding bond to accommodate Verizon and FPL

attachment requirements at no charge to Verizon; CLEC attachers must reimburse FPL for their unique pole bonding needs.

8. Direct Access to FPL's Engineers: At no cost, Verizon has direct access to FPL's local engineer to articulate its attachment needs which greatly reduces its costs and time in making attachments.
9. Insurance Requirements: Cable companies and competitors are required to purchase their own insurance and must list FPL as an additional insured and indemnify FPL. There is no such requirement on Verizon.
10. Other Financial Requirements: Verizon is not required to have a performance bond or letter of credit; Verizon's competitors and cable companies must provide such to FPL before they are allowed to attach.
11. Wasted Space by Verizon: Verizon's large, heavy copper cables must be installed up to two feet higher than competitors' cables due to sagging. This renders otherwise useable space on FPL's poles unusable. Cable companies and competitors' cables generally do not occupy this much space.
12. Self-reporting of Attachments: The Agreement allows Verizon to self-report its attachments and report its own financial liability. As a result, Verizon is not required to file permit applications for its attachments and removals.

See Kennedy Decl. at ¶¶ 19-36.

None of Verizon's competitors receive these benefits. A comparison to the list provided by the Commission in the *Pole Attachment Order, see* ¶ 216 n.654, readily shows that Verizon receives valuable and specific benefits that CLECs do not.

C. Verizon Has Not and Cannot Provide Evidence of Other Relevant Contracts Because They do Not Exist

As a result of all of the additional benefits provided to Verizon under the Agreement, Verizon has not provided and cannot provide the agreements required by the Commission's rules in relation to filing a complaint. *See Pole Attachment Order* ¶ 217 ("we modify our pole attachment complaint rules to require that incumbent LECs provide, in a complaint proceeding, any agreements between the defendant utility and a third party attacher with whom the incumbent LEC claims it is similarly situated . . . ."). Verizon provided a 1994 agreement between FPL and MCI in its filing. *See* Compl. ¶ 15. However, this CLEC agreement does not convey any of the benefits provided by FPL to Verizon in the Agreement. The 1994 MCI agreement is therefore not helpful to Verizon in any sense. It instead establishes FPL's point. First, the MCI agreement proves the value, justness and reasonableness of the 1975 joint use agreement. Second, to the extent that Verizon purports to claim that it should be treated identically to MCI, Verizon has put the cart before the horse. To achieve that "equality," Verizon would have to affirmatively, and, somehow retroactively, relinquish each and every one of its historical joint use benefits, including remaining at the lowest spot on the pole, to obtain the same rate as a CLEC attacher. That is not possible.

D. The Commission Should Not Condone Verizon's Use of Self-Help

Verizon has engaged in self-help and now, somewhat brazenly, seeks the Commission's blessing for having done so. Verizon stopped paying its contractual rates, even before terminating the Agreement, forcing FPL to file suit in Florida state court to collect on past due invoices. After making some token payments, Verizon again stopped paying amounts due before it filed its complaint with the Commission.

The proper remedy for an ILEC which believes it is paying unreasonable rates is to continue paying the disputed rates while simultaneously challenging them. The FCC had it right when it provided its interpretation of the Act to the United States Court of Appeals for the Eleventh Circuit: "[I]n the absence of an FCC adjudication, a cable company seeking pole access must pay the rate that the utility demands." Letter Brief of United States Department of Justice at 2, March 29, 1999, *Gulf Power Co. v. United States*, No. 98-2403 (11th Cir.), attached as Exhibit 2. *See also Fiber Technologies Networks, LLC v. Duquesne Light Co.*, 18 FCC Rcd. 10628 (2003) (holding that complainant attacher would not suffer irreparable harm by paying alleged overcharges for pole attachment fees and then filing a complaint seeking a refund).

If every ILEC followed Verizon's lead, electric utility customers would face increased rates on account of collection costs and lost revenue credits in the amount of the value of the rental payments illegally withheld. No industry could reasonably plan for the future if counterparties resorted to self-help rather than following agreed procedures. This is particularly true for regulated entities, such as FPL, whose rates are set based on projected revenues and expenses.

The FCC and the courts have found on many occasions that similar self-help nonpayment practices violate Sections 201(b), 203(c) and other provisions of the Act. *MGC Commc'ns, Inc.*, 14 FCC Rcd. 11647 (1999), *aff'd, MGC Commc'ns, Inc. v. AT&T Corp.*, Mem. Op. and Order, 15 FCC Rcd. 308 (1999); *Nat'l Commc'ns Ass'n v. AT&T*, 2001 WL 99856 (S.D.N.Y. Feb. 5, 2001); *MCI Telecomms. Corp.*, Mem. Op. and Order, 62 F.C.C. 2d 703 (1976); *Communique Telecomms, Inc. d/b/a LOGICALL*, Declaratory Ruling and Order, 10 FCC Rcd. 10399 (1995), *aff'd*, 14 FCC Rcd. 13635 (1999). The Court in *Level 3 v. Telephone Operating Company of Vermont, LLC*, held:

> The clear line of authority regarding rate disputes is that the customer may not resort to self-help; that is, the customer may not merely refuse payment of the disputed rate but must pay the rate then bring an action to determine the validity of the carrier's actions. In essence, the [customer] resorted to self-help by refusing to pay the disputed deposit and incurring the alleged lost profits.

Level 3 v. Tel. Operating Co. of Vermont, LLC, 2011 WL 6291959 (D.Vt. Dec. 15, 2011). The Commission should not condone, let alone encourage in any fashion Verizon's unlawful self-help after the fact.

Ironically, Verizon showed as much disregard for the Commission as it did for its contract with FPL. Without giving a moment's thought to following the appropriate course of good faith business conduct, Verizon became its own FCC. Although the *Pole Attachment Order* did not declare that Verizon was necessarily entitled to a particular rate or even to any relief at all under the circumstances, Verizon decided and implemented its own rate relief. Its failure to invoke the FCC Complaint procedure was raised numerous times in the state court litigation and yet it was not until the Florida state court threatened Verizon's self-effectuating rate regulation that Verizon invoked this Commission's guidance and authority.

E. The Commission Should Not Condone Verizon's Deliberate Choice to Operate Without an Agreement in Place

Verizon terminated the Agreement knowing its options. Historically, CLECs and cable companies seeking access to utility poles for their attachments would employ a "sign-and-sue" approach. In the *Pole Attachment Order*, the Commission not only condoned this process, but specified its expectation that parties will continue to use it. *See Pole Attachment Order* ¶¶ 119-125 (generally), ¶ 216, n.655 ("we note that the 'sign and sue' rule will apply here in a manner similar to its application in the context of pole attachment agreements."). There is no indication in the *Pole Attachment Order* that the Commission intended to exempt ILECs from this approach.

Verizon deliberately ignored the sign and sue rule. It chose instead to terminate the parties' 37-year-old agreement. In the Commission's words, it showed that it had "the ability to terminate an existing agreement and obtain a new arrangement." *Pole Attachment Order*, ¶ 216. Verizon nevertheless remains attached to approximately 67,000 FPL poles. The Commission thus correctly observed that: ". . . Although incumbent LECs cite the potential threat of having to remove attachments from electric utility poles if an agreement is terminated, . . . we believe that electric utilities are unlikely to pursue such actions . . . ." *Id.* ¶ 216 n.655. FPL has not ejected Verizon from its poles.

All that has happened is that Verizon has chosen to operate without a current agreement in place. In fact, FPL presented Verizon with an agreement that Verizon could have signed and that would have covered all of Verizon's attachments, both new and old, *see* Kennedy Decl. at 46, but Verizon refused to enter the agreement. The Commission should not reward Verizon's decision to operate and share critical infrastructure without a current agreement by awarding Verizon a rate untethered to any agreement.

VII. Even if the Commission Determines That Verizon Qualifies for CLEC Treatment, the Rate Going Forward Should be the Telecommunications Rate Multiplied by 4

The Commission has stated that:

> [W]e find it reasonable to look to the preexisting, high-end telecom rate as a reference point in complaint proceedings involving a pole owner and an incumbent LEC attacher that is not similarly situated, or has failed to show that it is similarly situated to a cable or telecommunications attacher. As a higher rate than the regulated rate available to telecommunications carriers and cable operators, it helps account for particular arrangements that provide net advantages to incumbent LECs relative to cable operators or telecommunications carriers.

Pole Attachment Order ¶ 218. As demonstrated above, Verizon has failed to prove that it is similarly situated to a cable or telecommunications attacher. In fact, FPL has shown that

Verizon enjoys significant benefits that are not available to cable and telecommunications attachers.

According to Verizon, the historic telecommunications formula should apply in the event the Commission makes such a finding. *See* Compl. ¶ 53. Verizon argues that this rate should be $12.91 for 2011 and 2012. Compl. ¶ 61. However, the substantial benefits accruing to Verizon under the Agreement, and particularly those allowing Verizon a space reservation that continues in perpetuity, justify a substantially higher rate, even against the backdrop of the Commission's historic telecommunications rate formula.

For the last thirty-nine years pursuant to the Agreement, Verizon has had the benefit of a four-foot space allocation on FPL poles. Kennedy Decl. ¶ 16. Any rate the Commission applies must recognize this fact and the associated burden borne by FPL's customers in making this concession, as discussed above. Pursuant to 47 C.F.R. § 1.1418, either party may rebut the presumptive one foot space allocation. Verizon offers only a naked unsupported assertion from Mr. Lindsay, unburdened by data or evidence. This does not meet Verizon's burden of proof under 47 C.F.R. § 1.140(b). FPL, however, can establish both that four feet is what is specified in the parties' Agreement and also provides documentary evidence below.

More specifically, Verizon used 1.25 feet of space in its telecommunications rate calculations to arrive at the $12.91 rate, claiming that "Recent audits of Verizon's facilities in Florida and elsewhere confirm that Verizon's facilities occupy on average not more than 1.25 feet of space on a joint use pole." Compl. Ex. B ¶ 10 (Calnon Aff.). However, Verizon has not provided any factual support or documentary evidence for this assertion and does not acknowledge that FPL has reserved four feet of space for Verizon, which Verizon has used in many instances. Kennedy Aff. at 37. Indeed, attached are photographs of Verizon attachments

on FPL poles clearly showing that Verizon is using 4 or more feet of space. *See* attached Exhibit 3.

Under the historic telecommunications rate, the rate is defined as Space Factor x Net Cost of a Bare Pole x Carrying Charge Rate. As a result, the rate is directly proportional to the Space Factor. The actual four foot space reservation enjoyed by Verizon results in a Space Factor four times greater than the one foot of space Verizon used. Accordingly, whether Verizon believes the applicable rate is the "old telecommunications rate" or the "new telecommunications rate," that rate should be multiplied by a factor of 4.

However, the Space Factor is inversely proportional to the Pole Height under the historic telecommunications formula, such that taller poles yield a lower Space Factor, and therefore, a lower rate. The Commission has specified a 37.5 foot pole as the default value for these purposes. Verizon chose to use a 41 foot value, without reasonable justification. Compl. ¶ 11. Again failing to meet its burden of proof, Verizon purports to justify this value by a single rate calculation worksheet provided by FPL to Verizon, which included a 41 foot value, but that was simply a sample pole population snapshot from 2010. *See* Kennedy Decl. at 39. In fact, the correct average pole height should be the presumptive height of 37.5 feet. *Id.* As a result, even if the Commission chose to apply the "new" telecommunications rate because Verizon qualifies as a CLEC, which it does not, the rates should be adjusted further upward. The rates for 2011 and 2012, respectively, would be: $9.31 times four feet of space, totaling $37.48 and $9.78 times four feet of space, totaling $39.12. *See* Spain Decl. at ¶¶ 23-24.[5]

[5] Verizon's unilateral self-regulation of rates also extended to attachments to FPL's transmission facilities. Verizon included 170 transmission poles in its calculations and paid for them at Verizon's self-determined telecommunications rate. These poles, however, are outside of the Commission's jurisdiction and Verizon must pay the rate charged by FPL. *See Southern Company v. FCC*, 293 F.3d 1338, 1344-45 (11th Cir. 2002).

VIII. Any Potential Refunds Should Only Begin to Accrue Upon or After a Finding by the Commission That the Agreement Rate is Not Just and Reasonable

Verizon requests unspecified relief in the form of a refund ordered by the Commission for overpayments after the effective date of the *Pole Attachment Order*. Comp. ¶ 62. Because Verizon only paid the amount it self-determined it owed, no refund could possibly be due Verizon.

Ultimately, however, even if Verizon were entitled to any relief at all, it is unclear how that relief might be measured. The Commission stated: "We also adopt the proposed modification of the Commission's rules § 1.1410(c), which permits a monetary award in the form of a 'refund or payment,' measured 'from the date that the complaint, as acceptable, was filed, plus interest.' We believe that this modification, which will allow monetary recovery in a pole attachment action to extend back as far as the applicable statute of limitations, will make injured attachers whole, and will be consistent with the way that claims for monetary recovery are generally treated under the law." *Pole Attachment Order* ¶ 110. However, as the U.S. Court of Appeals for the D.C. Circuit has noted, the Commission has not articulated which statute of limitations would apply under the rule. *American Elec. Power v. FCC*, 708 F.3d 183, 190 (D.C. Cir. 2013). Verizon has not identified an applicable statute of limitations.[6] Neither party has any guidance as to what the statute of limitations may be in this case.

Given Verizon's dilatory and deliberate efforts to avoid resolving this matter, *supra* at 7, the Commission should declare that Verizon has engaged in laches and that any applicable

[6] FPL is well aware of the holding in *American Elec. Power v. FCC*, 708 F.3d 183, 190 (D.C. Cir. 2013), that, "[u]nder this broad authorization, it is hard to see any legal objection to the Commission's selection of any ***reasonable period*** for accrual of compensation for overcharges or other violations of the statute or rules." This holding was focused more on the abstract question of whether the Commission had met the requirements of *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) that are applicable when the agency reverses course in a rulemaking. The *AEP* ruling did not address any particular accrual period or any as-applied facts, such as the instant case. The ruling did not even expressly address the issue of retroactivity. Therefore, the *AEP* holding should not be interpreted to countenance retroactivity under the circumstances of the instant proceeding. Any other conclusion would be inconsistent with *Bowen*.

statute of limitations has expired. *Bethea v. Langford*, 45 So. 2d 496, 498 (Fla. 1949) (The doctrine of laches is an unreasonable delay in enforcing right, coupled with disadvantage to person against whom right is asserted). *See also Geter v. Simmons*, 49 So. 131, 133 (Fla. 1909) ("No rule of law is better settled than that a court of equity will not aid a party whose application is destitute of conscience, good faith, and reasonable diligence, but will discourage stale demands for the peace of society, by refusing to interfere where there have been gross laches in prosecuting rights, or where long acquiescence in the assertion of adverse rights has occurred"(internal citations omitted)); *Smith v. Daffin*, 155 So. 658, 660 (Fla. 1934)(where conscience, good faith, and reasonable diligence on part of person seeking aid of court of equity is lacking, court will not grant complainant relief prayed for, even though he might have been entitled to relief if he had acted with reasonable diligence). Verizon only came to the Commission because the Florida state court dismissed its counterclaim a few days earlier. The Commission should not invent a statute of limitations and reward Verizon's delay. Instead, any potential remedy the Commission considers fashioning should begin only upon an order from the Commission finding a rate or term under the Agreement to be unjust or unreasonable.

IX. Verizon Failed to Engage in Executive Level Discussions as Required by Law and Sought by FPL

Verizon's relief must also be denied because it failed to fulfill its regulatory obligation to engage in good faith executive-level discussions prior to filing a complaint. There were none. Verizon's "good faith certification" to the contrary is knowingly misleading. Verizon's Complaint must therefore be dismissed.

47 C.F.R. § 1.1404(k) provides that:

> The complaint shall include a certification that the complainant has, in good faith, engaged or attempted to engage in executive-level discussions with the respondent to resolve the pole attachment dispute. Executive-level discussions are

> discussions among representatives of the parties who have sufficient authority to make binding decisions on behalf of the company they represent regarding the subject matter of the discussions. Such certification shall include a statement that, prior to the filing of the complaint, the complainant mailed a certified letter to the respondent outlining the allegations that form the basis of the complaint it anticipated filing with the Commission, inviting a response within a reasonable period of time, and offering to hold executive-level discussions regarding the dispute. A refusal by a respondent to engage in the discussions contemplated by this rule shall constitute an unreasonable practice under section 224 of the Act.

Verizon alleges that it "offered to hold executive-level discussions regarding the dispute," and that such meeting occurred on January 27, 2012. *See* Compl. Affidavit of Steven R. Lindsay ("Lindsay Aff."), ¶ 12. However, no executives were present at that meeting. Mr. Lindsay named the Verizon attendees at that meeting, and identified their positions. None were executives.

While Verizon terminated the agreement in advance of the meeting, FPL nevertheless participated in what it believed at the time to have been a productive meeting. The parties described their positions in detail and left open a number of issues for further thought and exploration. To FPL's dismay, when the parties next gathered [redacted] none of the January 27, 2012 Verizon attendees were present. FPL was left to re-explain each of the points it had described in detail at the January 27, 2012 meeting to a new set of Verizon representatives who apparently were hearing FPL's position for the first time. FPL was expected to start over, to no apparent purpose.

The lack of executive personnel – and lack of continuity in non-executive personnel – in the meetings between the parties was an obstacle to productive discussions. There has been no legitimate process to engage in comprehensive, informed settlement discussions; instead, FPL personnel have had to re-explain facts and positions to new people who appeared to have no

understanding of what had already been discussed. Moreover, it was clear FPL was not dealing with Verizon decision-makers. Kennedy Decl. ¶¶ 42-49.

FPL, by contrast, heeded the Commission's directive and on at least three occasions took the initiative to attempt to engage in executive level discussions. Verizon repeatedly rebuffed FPL's efforts. *See* FPL Exh. 1 (confidential).

There was only the briefest of an exchange between an FPL executive and a Verizon executive. In April 2013, FPL's Vice President of Power Delivery, Manny Miranda, reached out to Mike Daigle, Verizon's Vice President of Access I Transport Engineering in Verizon Corporate Technology, in an effort to determine whether there were any viable settlement solutions. The brief exchange confirmed that no resolution could be achieved. Verizon had no interest in moving in that direction. The exchange did not, however, constitute "good faith . . . executive-level discussions."

In other discussions between non-executive personnel, FPL made clear that while it must preserve its legal rights, it did not believe that litigation was mutually exclusive of settlement discussions. *Id.* Thus, even after filing suit in state court simply to obtain payment of past due amounts, FPL sought productive discussions at the level of Messrs. Miranda and Daigle. On May 3, 2013, FPL's attorney wrote to Verizon's attorney and requested that settlement discussions be held at the executive level. Verizon's attorney responded by offering to have a non-executive represent Verizon in a meeting.

Again, on May 21, 2013, FPL's attorney wrote to Verizon's attorney, stating: "In reference to developing a framework for settlement, we believe that the parties will have a better chance of success if the settlement discussions continue where they left off and go through the executive level." Verizon's attorney rejected this approach on May 23, 2013, stating: "we won't

need to involve our respective executives directly in the discussions." FPL's attorney repeated the attempt to engage Verizon at the executive level on May 29, 2013, to no avail. Then, on October 29, 2013, FPL renewed its offer to engage in executive level discussions with Verizon. *Id.* To date, Verizon has not accepted FPL's invitation to have actual good faith executive-level discussions. Accordingly, Verizon has no right to ask the Commission to dedicate its resources to this matter and the Complaint should be denied.

X. The Pole Attachments Act Provides the FCC No Jurisdiction over ILEC Attachments

Verizon's Complaint seeks relief that the Commission is unable to provide because the Pole Attachments Act does not provide the Commission with jurisdiction. Section 224(b)(1) of the Communications Act provides that "the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions." 47 U.S.C. ¶ 224 (b)(1). The statute defines a pole attachment as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. §224(a)(4). However, Section 224(a)(5) of the Communications Act makes clear that "[f]or purposes of this section, the term 'telecommunications carrier' (as defined in Section 153 of this title) does not include any incumbent local exchange carrier as defined in Section 251(h) of this title." 47 U.S.C. § 224(a)(5).

A "provider of telecommunications service" is synonymous with "telecommunications carrier" under Section 153(44) of the Communications Act, which means that ILECs are, under that general definition, telecommunications carriers. However, as noted above, all such carriers are not telecommunications carriers for the purposes of Section 224. Thus, since ILECs cannot

be considered carriers under Section 224, and all carriers are providers under Section 153, ILECs also must not be considered as providers of telecommunications services for purposes of Section 224. Given the plain meaning of the Communications Act, ILECs are specifically excluded from the Commission's jurisdiction to regulate attachments under Section 224.[7]

[7] *American Elec. Power v. FCC*, 708 F.3d 183, 190 (D.C. Cir. 2013) does not foreclose this argument. FPL is entitled to challenge the Commission's order in this as-applied basis, given that the specific circumstances demonstrate the arbitrary and capricious error of exercising jurisdiction over joint use rates. *See, e.g., Ass'n of Private Sector Colleges & Universities v. Duncan*, 681 F.3d 427, 442 (D.C. Cir. 2012) (we "preserve the right of complainants to bring as-applied challenges against any alleged unlawful applications [of agency rules]"); *Preminger v. Principi*, 422 F.3d 815, 821 (9th Cir. 2005) (we have jurisdiction to review an as-applied challenge).

CONCLUSION

Based on all of the foregoing, FPL asks that the Commission deny Verizon's Complaint and the relief requested. FPL requests that the Commission instead enter an order determining that the rates arising from the parties' Joint Use Agreement are just and reasonable, and that the rates and terms under the Agreement remain in full force and effect regarding all joint use attachments made prior to the termination date of the Agreement until the parties reach a new agreement. The applicable rate for all such attachments shall be the rate specified under the Agreement, which for 2011 and 2012 are $35.465 and $36.225, respectively.

FPL remains willing to engage in meaningful settlement negotiations that involve each party's respective corporate executives and which strike a sensible balance that recognizes the value that joint use arrangements provide.

WHEREFORE, Florida Power & Light Company respectfully requests that the Commission deny Plaintiff's Complaint and the requested relief, and provide any other relief the Commission deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2014, I caused a copy of the foregoing **Respondent's Response to Plaintiff's Complaint** to be served on the following by hand delivery, U.S. mail or electronic mail (as indicated):

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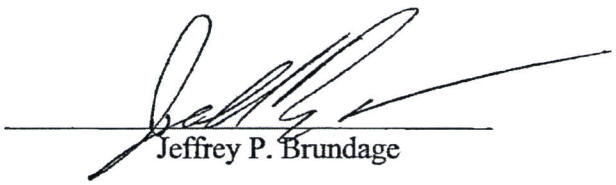

Jeffrey P. Brundage

REDACTED – FOR PUBLIC
INSPECTION

Exhibit A

PUBLIC – CONFIDENTIAL INFORMATION REDACTED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

VERIZON FLORIDA LLC,	*	
	*	
Complainant,	*	
	*	
v.	*	File No.: EB-14-MD-003
	*	
FLORIDA POWER AND LIGHT COMPANY,	*	
	*	
	*	
Respondent.	*	
	*	

DECLARATION OF THOMAS J. KENNEDY
ON BEHALF OF DEFENDANT
FLORIDA POWER AND LIGHT COMPANY

I, THOMAS J. KENNEDY, having personal knowledge of the facts contained herein, state as follows:

1. My name is Thomas J. Kennedy, and my business address is Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

2. I am over the age of eighteen (18) years old and am otherwise competent to testify.

3. I am employed by Florida Power & Light Company ("FPL" or the "Company"). I am currently employed as Principal Regulatory Analyst in the Power Delivery business unit and have held that position since July 2012.

4. I am FPL's Professional Engineer responsible for managing Joint Use. Since 1994, I have been responsible for negotiating all new pole attachment agreements for Distribution, assisting in the establishment of pole attachment policies and processes for field personnel, providing agreement language interpretation and resolving field disputes, assisting with the oversight of pole attachment rate calculations, tracking and billing incumbent local exchange carriers ("ILECs") and telecommunication carrier attachments, ensuring compliance with pole attachment related Sarbanes Oxley requirements, complying with Federal Communication Commission ("FCC") and Florida Public Service Commission ("FPSC") regulatory requirements, legal and contractual requirements, budgeting and forecasting of pole attachment revenues and expenses, and ensuring that pole attachment related financial transactions are properly accounted.

5. I graduated from the University of Florida in 1983 with a Bachelor of Science in Mechanical Engineering. I have been employed by FPL since 1985. Prior to my current role at FPL, I held positions at FPL including distribution planner, transmission and distribution crew supervisor and distribution design engineer. I am a Professional Engineer licensed in the State of Florida.

6. The purpose of my declaration is to explain the nature of the joint use of facilities ("joint use" relationship between FPL and Verizon and to provide facts relevant to FPL's response to the Complaint filed by Verizon against FPL before the Federal Communications Commission ("FCC").

I. HISTORY OF THE PARTIES' JOINT USE RELATIONSHIP

7. Verizon's pole attachment relationship with FPL goes back into the early to mid-20th century. At the time Peninsular Telephone Company (which bought out the interest of the Bell Telephone Company in 1905), the forerunner to General Telephone Company of Florida ("GTE") which preceded Verizon, did not have a formal pole attachment agreement with FPL. By 1928, about the time FPL came into existence, Peninsular already held the franchise for the ILEC service territory that Verizon currently shares with FPL. Over time, the companies entered into informal agreements that allowed one company to attach to the other company's poles in exchange for future reciprocity. By 1959, FPL recognized a disparity in pole ownership where the two companies were sharing poles without compensation. FPL and GTE began meeting in December of 1959 to address this disparity and establish an agreement to compensate the majority pole owner. *See* Exhibit A, 1959 Minutes. In the course of their meeting, GTE offered to pay a higher pole rental rate so that it would not be obligated to own and maintain an equal number of poles. Conversely, FPL insisted that GTE own at least half of the joint use poles and offered to sell existing poles to GTE.

8. In July 1960, FPL requested that a formal agreement be in place before continuing the joint use relationship going forward. By early 1961, the parties executed a mutually agreeable joint use agreement. Billing under the agreement was retroactive to January 1, 1960. *See* Exhibit B, 1961 Joint Use Agreement. That joint use agreement expressed "desire" by both the electric company and the telephone company to execute an agreement in accordance with the "Principals and Practices for the Joint Use of Wood Poles by Supply and Communications Companies," which is contained in the 1945 document "Reports of Joint General Committee of Edison Electric Institute and Bell Telephone System on Physical Relations Between Electrical Supply and Communication Systems." *See* Exhibit C, EEI-Bell Report. American Telephone and Telegraph Company ("AT&T") had three members on the committee who published this document. Bell Atlantic and NYNEX, which were two of the seven "Baby Bells" of AT&T, are the primary backbone of what is Verizon today. Therefore, Verizon's predecessors effectively assisted and co-authored the terms of the joint use agreement that GTE signed in 1961. The EEI-Bell Report states, "In cases where it is not clear as to what constitutes an equitable apportionment a fifty-fifty division of the costs may be found the most practicable solution." *Id.* at 35.

9. In 1960, GTE owned 1,571 joint use poles (7.8%) with FPL attached and FPL owned 18,466 joint use poles with GTE attached. The last verified survey occurred in 2011. That survey found that Verizon owned 7,010 joint use poles (9%) with FPL attached and FPL owned 67,149 joint use poles with Verizon attached. Thus, Verizon increased its pole ownership interest by 15% over that period.

10. Verizon or its predecessors had been attaching to FPL's poles since 1928. CATV companies did not start attaching until 1970.

11. On January 1, 1975, GTE and FPL entered into their second joint use agreement. *See* Complaint, Lindsay Aff. Exh. 1. The terms and conditions of this agreement were based on the 1961 agreement, but the rates to attach were modified and the fallback rate that would apply if negotiation failed was removed. This was the second opportunity GTE had to negotiate the adjustment rate for joint use. The current joint use attachments fall under the terms and conditions of this agreement, except as amended by the March 29, 1978 Supplemental Agreement, *see* Complaint, Lindsay Aff. Exh. 2, and the 2007 Confidential Letter of Agreement between Florida Power and Light and Verizon Florida LLC, dated September 27, 2007, *see* Complaint, Lindsay Aff. Exh. 3.

12. GTE's third opportunity to negotiate the joint use adjustment rate came in 1978 when GTE and FPL negotiated the supplemental agreement to the joint use agreement. This agreement was put in place primarily to address the joint use adjustment rate.

13. **[Begin Confidential]** ----------

---------- **[End Confidential]**

14. The joint use agreements with FPL have given Verizon the right to set as many new joint use poles as it desires. These agreements did not force parity, but did encourage parity. The joint use adjustment rate was just one of the means used to encourage pole ownership parity. FPL never discouraged Verizon from owning poles, nor did FPL deny them the right to set new poles. However, Verizon voluntarily elected to pay the annual joint use adjustment rate rather than owning the poles.

15. This history shows that Verizon (or its predecessors) took part in authoring the document upon which the joint use agreements were based. Additionally, Verizon (or its predecessors) successfully negotiated a rate to attach for the joint use agreements with FPL three different times after years of paying no fees and affirmatively chose not to negotiate terms in 2007 when Verizon was given another opportunity to do so.

II. NATURE OF THE JOINT USE AGREEMENTS BETWEEN FPL AND VERIZON

16. The approximately 74,000 poles FPL currently shares with Verizon were built under terms of the joint use agreement. Since 1975, the parties' joint use agreement has always required FPL to build its joint use poles tall and strong enough to accommodate Verizon.

The mutual benefit of joint use is to share infrastructure costs and to reduce pass-through costs to customers. In its simplest form, the joint use agreement obligates the pole owner to build and maintain a pole that is taller and stronger than the pole owner needs to serve the owner's customers. The joint use agreement between FPL and Verizon places no make-ready or permitting requirements on either party for normal construction needs because the pole networks are engineered and constructed with joint use in mind. Perhaps most importantly, the joint use agreement gives both parties responsibility for the safety and reliability of the joint use networks. This creates a mutually dependent relationship that necessitates fair treatment between the parties. This agreement has never been a "space rental" agreement like the pole attachment agreements between pole owners and cable companies or CLECs.

17. Pursuant to the joint use agreement, FPL installs poles tall enough and strong enough to accommodate Verizon's attachments. To accommodate Verizon's four feet of space, FPL must install a pole 94-100 inches taller than it needs to serve its electric customers and, in many cases, two classes stronger. For this accommodation, FPL typically must spend about 50% more on the installation of a pole to make it a joint use pole. The 100 inches of additional height comes from the four feet of space required by the agreement plus 40 inches of communications worker safety space. Additionally, poles are only sold in five-foot increments and the taller the pole, the deeper it must be installed in the ground. Therefore, to install a ten feet taller pole, twelve inches is added for the additional depth requirement.

18. On a number of occasions, FPL has offered Verizon a pole attachment agreement to Verizon that is comparable to the agreements FPL has with other attachers. *See* Exhibit D, May 30, 2012 Offer.

III. Benefits Verizon Receives Under the Joint Use Agreement and Corresponding Additional Costs Borne by FPL and its Customers under the Joint Use Agreement

19. FPL has made substantial capital investments in setting joint use poles under the Agreement. These costs include capital, operating and maintenance as well as other carrying costs, including for example, permitting costs, pre-inspection costs, make-ready costs, post inspection costs, insurance, and security. Verizon's payments under the Joint Use Agreement partially offset in part the cost of those investments. FPL's customers would bear the incremental costs incurred for and on behalf of Verizon, to the extent the investment is not recovered through joint use rates.

20. The joint use agreement obligates the pole owner to operate and maintain the joint use pole for the life of the joint use attachment – not the pole. That means when the FPL pole reaches end of life or when the Department of Transportation forces relocation of the pole for roadwork, FPL is responsible for replacing the pole without contribution from Verizon. In accordance with the joint use agreement, FPL sets a new replacement that will accommodate Verizon's joint use attachments. FPL also has other expenses associated with pole ownership such as insurance, property taxes, administrative fees, costly ongoing inspection fees for poles, trimming fees, expensive storm repair, and personal injury, trespass and property damage claims associated with pole ownership.

21. The joint use agreement requires that the pole owner consider and design for the needs of the joint use attacher when designing a new pole line. If Verizon indicates they will be using the pole line, FPL will design the pole line to accommodate Verizon's facilities and work with Verizon to place the poles where they suit both companies' needs. Other attachers pay for make-ready work and pole replacements to increase capacity, or they go underground. FPL may also deny other attachers access for reasons of capacity, reliability, safety, or applicable engineering concerns.

22. Since the joint use pole line was designed for joint use with Verizon, Verizon is not required to obtain advance approval to make attachments. Other attachers must follow the permit application process, in which they are charged a fee to compensate FPL or FPL's vendor for the permit review effort. This process may take a period of time.

23. FPL pole lines built to accommodate Verizon under the joint use agreement require no survey or engineering of clearance or structural impact from Verizon. These were all provided to Verizon at FPL's cost when the poles were installed. Other attachers must use the measurement worksheet to confirm that adequate clearances exist for the installation of its attachment. In addition, the measurement worksheet is used to prepare and submit a strength study for wind-loading, including calculations according to FPL requirements specified in FPL's Permit Application Process Manual. These other attachers must provide the measurement worksheet and engineering strength study for wind-loading for each FPL pole.

24. FPL does not routinely check Verizon's attachment after installation because the design of their facilities is incorporated within FPL's design under the joint use agreement. Other attachers are subjected to a post-attachment inspection of each attachment and are responsible for the costs associated with that inspection.

25. Because of joint use, Verizon has had unfettered access to FPL poles without scrutiny over whether an attachment was authorized. Verizon thus has never been subject to an unauthorized attachment fee. When other attachers do not follow the application process, they are subject to unauthorized attachment fees for subjecting the pole line to safety and reliability issues.

26. Where the joint use agreement calls for the exchange of a payment for make-ready, Verizon is only charged direct overheads that are required for the work. Other attachers pay an allocation of all applicable overheads for make-ready work, including, for example, administrative and general ("A&G") expenses.

27. The joint use agreement requires the pole owner to obtain rights-of-way for the joint user, to the extent that they are able to obtain those rights. Verizon has benefitted from FPL obtaining those rights-of-way for Verizon. This involved individual negotiations, contracts, land records research and recordings, with thousands of real property holders. In many cases Verizon has been able to attach to FPL poles without ever communicating with the land owner. Verizon's competitors have had to and continue to obtain their own rights-of-way.

28. The joint use agreement gives Verizon four feet of space on a joint use pole in which to make its attachments. It also guarantees Verizon the right to the preferred spot on the pole – the lowest position – which ensures easy access and quick construction methods.

29. The joint use agreement requires the pole owner to change out a pole under several circumstances to accommodate the joint user. FPL is not required to change out a pole for other attachers.

30. Under the joint use agreement, Verizon pays the joint use adjustment rate annually in arrears. Verizon's competitors pay their pole attachment fee in advance.

31. As a pole owner and joint user, Verizon has the right to take ownership of a pole being abandoned by FPL if FPL is leaving the pole line. Verizon's competitors are required to relocate their facilities (if Verizon is not taking ownership of a pole and assuming they have a license agreement with Verizon) so FPL can remove the pole.

32. FPL shares its common grounding pole-bond with Verizon and is required to bond the pole in a manner that meets the requirements of the joint use agreement. If other attachers require bonding that is not currently on the pole, they are required to reimburse FPL for the necessary work.

33. Under the joint use agreement, liability is allocated based on responsibility. Other attachers are required to indemnify FPL and carry insurance coverage listing FPL as an additional insured.

34. Under the joint use agreement, Verizon is not required to provide performance assurances in relation to its attachments. Other attachers must provide a performance bond or letter of credit to reimburse FPL for removing its attachments in the event the other attacher goes out of business.

35. In many cases the addition of Verizon's attachments to an FPL pole adds significant load on the pole for design purposes. This is primarily driven by the increase in pole height and the girth of the Verizon cable. As a joint use pole owner, FPL is required to accommodate the doubling of the load factor or increase in capacity without a contribution in aid of construction.

36. Verizon still has copper cable on the poles. Copper cable sags 1 to 2 feet lower than the cable used by other attachers. This means Verizon's attachment must be installed 1 to 2 feet higher on the pole in the available communication space. This occupation of additional space has the effect of precluding at least one or two other attachments in the communication space. This effectively makes usable space unusable, to the detriment of Verizon's competitors. *See* Exhibit E, Illustration.

IV. JOINT USE RATES, NEGOTIATIONS BETWEEN THE PARTIES, INVOICING AND PAYMENTS

A. Joint Use Rates

37. The joint use agreement provides Verizon with four feet of space on the pole, which Verizon uses when needed. FPL has designed and constructed all of its joint use poles to which Verizon attaches based upon the need to accommodate Verizon. This is done by FPL at its own expense and at no extra cost to Verizon. The joint use agreement also provides six feet of space to FPL on a Verizon pole. I have attached to this declaration a photograph of two Verizon poles on which communications and/or cable television wireline is attached in the top six feet of Verizon's joint use pole, which is assigned to FPL under the agreement. *See* Exhibit F, Photograph of Verizon Poles. Presumably Verizon is charging pole attachment fees for these communications and cable attachments. FPL receives none of the revenues Verizon receives from attachments in the FPL space because the joint use agreement does not provide for sharing this revenue. Similarly, there may be instances where communications or cable attachments have been placed in the four feet of space assigned to Verizon. The same contractual provisions apply: revenue from third parties does not impact that annual joint use rate. Permitting third party attachers in unoccupied space is consistent with the FCC guidelines in the First Report and Order implementing the 1996 Telecommunications Act provisions modifying the Pole Attachments Act. In that order, the Commission mandated that utilities may not reserve available capacity on their facilities for future utility-related use unless the reservation is made pursuant to a bona fide development plan and that utilities must permit use of such reserved space by third-party attachers until the utility has an "actual need" for the space. As contemplated by the joint use agreement, if Verizon were to need additional use of their four feet of space, FPL accommodates Verizon at no additional cost to Verizon.

38. FPL uses the FCC's presumptive pole height of 37.5 feet in its rental rate calculations. Verizon's use of a 41 foot pole height is unsupported and erroneous. FPL purchases and installs distribution poles of about fifteen different pole class and length configurations for the distribution system every year. Verizon and their competitors likely attach to as many as ten or more of these different pole types and sizes, including many poles that are 25 and 30 feet in height. FPL does not track individual poles that have been installed and remain in service. This is the basis for using the FCC presumption.

39. The origin of the 41-foot figure erroneously used by Verizon in its rate calculations stems from Verizon's misplaced reliance on a 2010 worksheet that FPL uses to calculate the average cost of a joint use pole for the joint use adjustment rate in accordance with the formula in the 1978 supplemental agreement. FPL provided this information to Verizon as support for calculation of the joint use adjustment rate based on 2010 data. The data pertains solely to 35, 40 and 45 foot poles installed over the preceding six years, not the entire population of joint use poles. Verizon's erroneous use of this error was addressed in FPL's **[Begin Confidential]** ---------- **[End Confidential]**.

40. Additionally, while Verizon seeks to rebut one presumption under the FCC formula, it ignores other pertinent factors. Verizon has not adjusted the number of attaching entities downward to reflect the fact that it is closer to two, rather than five, and Verizon has not accounted for its four-foot space reservation.

41. The rates FPL would be permitted to charge Verizon under the old telecommunications rate for 2011 and 2012 would be $14.11 and $14.83 per foot of space used, respectively, using the presumptive average of 5 attaching entities. However, these rates do not account for the fully allocated costs of the attachments or the additional value and cost of providing the additional services provided to Verizon that are not provided to CLECs. Moreover, these rates do not account for Verizon's four- foot space reservation.

B. Negotiations between FPL and Verizon

42. I was the primary negotiator with Mr. Lindsay from June 27, 2011 until he ceased participating in negotiations on June 26, 2012. From this point through April 23, 2013 when FPL filed suit in Florida state court, John Bachmore was FPL's primary point of contact for negotiations at Verizon. I have participated in negotiations with Verizon from beginning to end. No Verizon representative has maintained continuity in negotiations from beginning to end.

43. On December 9, 2011, Verizon invited FPL to meet to negotiate a new agreement. In that letter Verizon also provided notice of terminating the parties' joint use agreement. The termination became effective six months later, June 9, 2012. As of that date, Verizon relinquished its contractual right to have FPL install poles tall enough to avoid make-ready work when Verizon intends to attach.

44. No company officers were present at the January 27, 2012 meeting referenced in Mr. Lindsay's affidavit. Mr. Lindsay states incorrectly that "FPL consistently denied that federal law provided Verizon any right to rate relief with respect to the facilities that Verizon had attached to FPL's poles prior to the July 12, 2011." See Complaint, Lindsay Aff. ¶ 11. Minutes taken by Verizon employee Sam Wasmundt of the various negotiating meetings held with Mr. Lindsay prior to the meeting on January 27, 2012 demonstrate that FPL recognized the relevance of federal law. *See* Exhibit G, Negotiation Minutes. These minutes also demonstrate the substantial effort FPL expended in meetings and preparation while trying to find creative ways to transition Verizon's existing attachments under the joint use agreement to an agreement with terms and conditions similar to those FPL has with other attachers. These efforts were driven by Verizon's desire to get the same rate other attachers and FPL's need to protect its customers' investments in pole plant under the joint use agreement.

45. In the meeting on January 27, 2012, the parties had what appeared at the time to be a productive initial meeting discussing the issues. Verizon inquired regarding what it would take to obtain rates similar to FPL's CLEC and cable rates. Once again, FPL explained that FPL and its customers invested in taller and stronger poles to accommodate Verizon's attachments under the joint use agreement and in return Verizon agreed to pay the joint use rate. FPL explained that accepting anything less would come under scrutiny of the Florida Public Service Commission. FPL asked Verizon if there was something Verizon could offer in return to offset the additional cost associated with joint use so the FPL could offer a lower rate and be kept whole. Verizon was unable to offer anything at the table, but said they understood and would consider it.

46. FPL offered Verizon a pole attachment agreement similar to their competitors for new attachments, even though granting ILECs access is not required by law. Additionally, FPL sought to explore ways to bring the existing attachments under the same rate as their competitor while making the electric customers whole. During these negotiating meetings, Verizon declined to acknowledge that its rights under the existing joint use agreement were in no way comparable to other attachers' rights, and refused to consider any offers that did not ultimately approximate the CLEC rate. At the end of the January 27, 2012 meeting, Verizon representatives indicated that they would consider FPL's proposals. However, the very next communication from Verizon was a carbon copy of Verizon's **[Begin Confidential]** ----------

47. ----------

48. ---------- **[End Confidential]**

49. The negotiations continued for approximately five more months but no resolution was reached. Verizon continued to withhold payment.

C. Invoicing and Payments

50. On February 29, 2012, FPL issued an invoice to Verizon for $2,097,293.70 for services rendered in 2011. I contacted Verizon representatives in April 2012, when Verizon's payment was thirty days past due, and again in May, when the payment was sixty days past due. On or about June 20, 2012, following a series of unanswered calls and emails, I reached out by telephone to Cissy George, Verizon's Director – National Engineering Transformation, who at the time was in charge of their nation-wide joint use program, to advise her that the payment for services rendered in 2011 was approaching ninety days past due. She responded by stating, "I am looking into it right now and reaching out to our Legal team for an update." On about June 22, 2012, **[Begin Confidential]** ----------
---

[End Confidential] but only if Verizon paid FPL at least $1,179,307.43 for services rendered in 2011, which was the amount that Verizon did not dispute. This amount for 2011 included half of the year Verizon would be charged at the joint use rate of $35.465/yr to attach to FPL poles with FPL being charged $35.465/yr to attach to Verizon poles, while the other half of the year Verizon would be charged $8.5188/yr to attach to FPL poles and FPL would be charged $35.465/yr to attach to Verizon poles. Verizon made a payment of $1,179,307.43 to FPL on July 18, 2012, 111 days past due and 171 days after a full year of service was rendered to Verizon by FPL. Verizon still owes FPL $917,986.27 for services rendered in 2011.

51. On May 15, 2013, FPL issued an invoice to Verizon in the amount of $2,319,985.02 for services rendered in 2012 and for true-up survey billing. On July 9, 2013, 55 days past due, FPL received a payment of $638,413.55 from Verizon. Verizon claims this payment represents full payment for the survey true-up of previous years, plus $8.52/yr (which is Verizon's calculation for 2011, not 2012) for the net number of poles to which Verizon was attached. Verizon still owes FPL $1,681,571.47 for services rendered in 2012.

52. At all times, FPL's annual pole attachment invoices continued to credit Verizon for FPL attachments on Verizon's poles at the agreed-upon rate in the Agreement.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2014

_____
Signature

DECLARATION OF THOMAS J. KENNEDY
List of Exhibits

Exhibit A, 1959 Minutes

Exhibit B, 1961 Joint Use Agreement

Exhibit C, EEI-Bell Report

Exhibit D, May 30, 2012 Offer

Exhibit E, Illustration

Exhibit F, Photograph

Exhibit G, Negotiation Minutes

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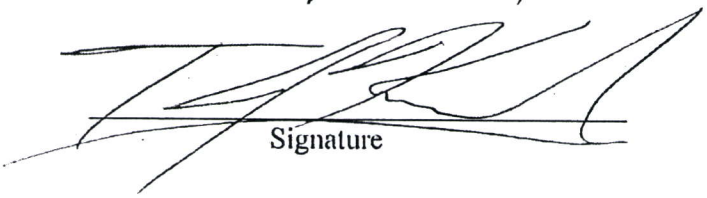
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 4, 2014



Signature

DECLARATION OF THOMAS J. KENNEDY
List of Exhibits

Exhibit A, 1959 Minutes

Exhibit B, 1961 Joint Use Agreement

Exhibit C, EEI-Bell Report

Exhibit D, May 30, 2012 Offer

Exhibit E, Illustration

Exhibit F, Photograph

Exhibit G, Negotiation Minutes

Exhibit A

FLORIDA POWER & LIGHT COMPANY

INTER-OFFICE CORRESPONDENCE

LOCATION Miami, Florida
DATE December 31, 1959

TO File

FROM R. F. Lewis

COPIES TO Mr. Ben H. Fuqua
Mr. Loftin Johnson
Mr. H. V. Street
Mr. J. A. Lasseter
Mr. J. G. Spencer

SUBJECT: 071.2-3 Joint-Use Agreement - General Telephone Company of Florida

A preliminary discussion of the subject matter was held in Tampa the morning of December 29th at the Plant and Engineering offices of the General Telephone Company of Florida.

Representing General Telephone Company:

Mr. Ben Darlington - General Plant Manager
Mr. James Arnold - General Plant Engineer

Representing Florida Power & Light Company:

J. G. Spencer, Jr.
R. F. Lewis

In this discussion the following points were developed:

It was agreed that there are about 16,000 poles presently in joint use, of which we own approximately 15,000.

Both Companies desire a Joint-use Agreement and that negotiations will be started the week of January 11th.

General does not want equal ownership, admittedly due to increased plant investment.

General does not want equal rental - because their investment for non joint-use would be lower.

General asked if we would consider a higher rental and accept unequal ownership.

From the Power Company's standpoint:

FLORIDA POWER & LIGHT COMPANY
INTER-OFFICE CORRESPONDENCE

LOCATION Miami, Florida
DATE December 31, 1959
COPIES TO

TO File Page 2

FROM

SUBJECT:

It was made clear that we would like an agreement that would provide for:

Equal ownership

Equal rental

Rental to be based on one half the average annual cost of owning and maintaining in place a standard pole

We asked that they consider buying poles from us to equalize ownership

We agreed to consider a higher rental for unequal ownership after a rental based on equal ownership was established.

The atmosphere of the meeting was very friendly and it was apparent that there is a fine relationship between the General Telephone representatives and Jim Spencer.

As these gentlemen were meeting with Tampa Electric on this subject in the afternoon, we communicated the outcome of our meeting to Lester Ulm, General Engineer for Tampa. We advised that they intend to stand pat on equal rental based on one half fixed charges. Ulm will send us a report of their meeting.

R. F. Lewis

RFL:ds

Exhibit B

1-5-61

1. ~~H. STREET~~
2. ~~LOFTIN JOHNSON~~
3. BEN COQUA

TABLE OF CONTENTS

THIS AGREEMENT, made this 5th day of January , 1961 , by and between FLORIDA POWER & LIGHT COMPANY, incorporated under the laws of the State of Florida, hereinafter called the "Electric Company", party of the first part, and GENERAL TELEPHONE COMPANY OF FLORIDA, incorporated under the laws of the State of Florida, hereinafter called the "Telephone Company", party of the second part;

WITNESSETH:

WHEREAS, the Electric Company and the Telephone Company desire to cooperate, in accordance with the "Principles and Practices for the Joint Use of Wood Poles by Supply and Communication Companies" as contained in the report of the Joint General Committee of the Edison Electric Institute and the Bell Telephone System dated July 1945, and National Electrical Safety Code and amendments thereto, and to establish joint use of their respective poles when and where joint use shall be of mutual advantage; and

WHEREAS, the conditions determining necessity or desirability of joint use depend upon service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by joint use of poles;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

For the purpose of this agreement, the following terms, when used herein, shall have the following meanings:

A. STANDARD SPACE - means sufficient space on a joint use pole for use of each party, taking into consideration requirements of the National Electrical Safety Code.

Except only as to the portion of its said space which, by the terms of the National Electrical Safety Code, may be occupied by certain attachments therein described of the other party, this space is specifically defined as follows:

(1) for the Electric Company, the uppermost 6 feet;
(2) for the Telephone Company, a space of 4 feet at sufficient distance below the space of the Electric Company to provide at all times the minimum clearance required by the specifications referred to in Article IV, and at sufficient height above the ground to provide proper vertical clearance for the lowest horizontally run line wires or cables attached in such space.

B. NORMAL JOINT USE POLE - means a pole which meets the requirements of the National Electrical Safety Code for support and clearance of supply and communication conductors under conditions existing at the time joint use is established, or is to be created under known plans of either party. Specifically, a normal joint use pole under this agreement shall be a 40 foot class 5 wood pole, complete with pole ground.

The foregoing definition of a "normal joint use pole" is not intended to preclude the use of joint use poles shorter or of less strength than the normal joint use pole in locations where such poles will meet the known or anticipated requirements of the parties hereto.

C. ATTACHMENTS - mean materials or apparatus now or hereafter used by either party in the construction, operation or maintenance of its plant carried on poles.

D. OWNER - means the party owning the pole to which attachments are made.

E. LICENSEE - means the party having the right under this agreement to make attachments to a pole of which the other party is the Owner.

F. JOINT USE COMMITTEE - A committee appointed as mutually agreed upon, composed of equal representation, of one or more from each party, to meet quarterly or more often, empowered to interpret, develop and regulate the joint use of poles within the scope of this agreement.

ARTICLE II

TERRITORY AND SCOPE OF AGREEMENT

This agreement shall be in effect and shall cover all poles of each of the parties now existing, hereafter erected or acquired within the common operating areas served by the parties hereto when said poles are brought hereunder, excepting:

A. Poles which, in the Owner's judgment, are necessary for its own sole use; and

B. Poles which carry, or are intended to carry, circuits of a character that in the Owner's judgment, proper rendering of its service now or in the future makes joint use of such poles undesirable.

ARTICLE III

PERMISSION OF JOINT USE

Each party hereto hereby permits joint use by the other party of any of its poles when brought under this agreement as herein provided subject to the terms and conditions herein stated.

ARTICLE IV

SPECIFICATIONS

Joint use of poles covered by this agreement shall at all times be in conformity with terms and provisions of the current issue of the National Electrical Safety Code, as to minimum requirements, and such revisions and amendments thereto from time to time as may be necessary by reason of developments and improvements in the art as may be mutually agreed upon and approved in writing by the Chief Engineer of the Electric Company and the Chief Engineer of the Telephone Company. Standard 30 inches of climbing space shall be maintained by Licensee or "other party", or both, to the degree that opening of each for access to upper level supply lines is in the same axis.

Edison Electric Institute Publication M-12, a report of the Joint Committee on Plant Coordination of the Edison Electric Institute and the Bell Telephone System, based on the National Electrical Safety Code, and such revisions and amendments thereto as may be made from time to time is to be used as a guide in administration of this agreement.

ARTICLE V

RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

The Owner will obtain suitable right of way for both parties on joint use poles insofar as practicable. Said right of way easements shall be in sufficient detail for identification and re-

cording where required. Easements shall be subject to inspection by the other party upon request.

Where reasonably practicable, the new joint right of way obtained will extend not less than 5 feet on each side of the center of the pole line, except where dedication or grant otherwise restricts.

Trimming insofar as side clearance, shade trees, etc., are concerned, when normal clearing of right of way swath is insufficient, shall be the responsibility of each Company for its own circuits. Where benefits are mutual and agreed upon beforehand, costs shall be shared on an equitable basis.

While the Owner and the Licensee will cooperate as far as may be practicable in obtaining rights of way for both parties on joint use poles, no guarantee is given by the Owner of permission from property owners, municipalities or others for the use of poles by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may at any time upon thirty (30) days notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved, and the Licensee shall, within thirty (30) days after receipt of said notice, remove its attachments from such poles at its sole expense. Should the Licensee fail to remove its attachments as herein provided, the Owner may remove them at the Licensee's expense.

ARTICLE VI

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS

A. Whenever either party desires to reserve space on any pole of the other, for any attachments requiring space thereon, not then specifically reserved hereunder for its use, it shall make written application therefor, specifying in such notice the location of the pole in question, and the number and kind of attachments which it desires to place thereon and the character of the circuits to be used. Within ten (10) days after the receipt of such notice, the Owner shall notify the Applicant in writing, whether or not said pole is of those excluded from joint use under the provisions of Article II. Upon receipt of notice from the Owner that said pole is not of those excluded, and after completion of any transferring or rearranging which is then required in respect to attachments on said poles, including any necessary pole replacements as provided in Article VII (A), the Applicant shall have the right as Licensee hereunder to use said space for attachments and circuits of the character specified in said application in accordance with the terms of this agreement.

B. Except as herein otherwise expressly provided, each party shall place, maintain, rearrange, transfer and remove its own attachments, (including any tree trimming or cutting incidental thereto), and shall at all times perform such work promptly and in such a manner as not to interfere with work being done by the other party. Licensee shall reimburse the Owner for the net expense incurred by the Owner for the benefit of the Licensee, for the transfer or rearrangement of the Owner's failities.

C. Each party shall place anchors for its own guying requirements.

ARTICLE VII

ERECTING, REPLACING OR RELOCATING POLES

A. Whenever any jointly used pole, or any pole about to be so used under the provisions of this agreement, is insufficient in size or strength for the existing attachments and for the proposed additional attachments thereon, the Owner shall promptly replace such pole with a new pole of the necessary size and strength, and make such other changes in the existing pole line in which such pole is included, as may be made necessary by the replacement of such pole and the placing of the Licensee's circuits as proposed.

B. Whenever it is necessary to change the location of a jointly used pole, by reason of any state, municipal or other governmental requirement, or the requirements of a property owner, the Owner shall, before making such change in location, give notice thereof in writing (except in cases of emergency when verbal notice will be given, and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed relocation, and the Licensee shall, at the time so specified, transfer its attachment to the pole at the new location.

C. To the end that pole replacements, to meet clearance requirements under the National Electrical Safety Code, be kept to a practical minimum, both parties hereto agree to coordinate plans in the layout of new projects or any large scale developments for the purpose of properly placing greater length or greater strength poles. Any such notice of desire to establish joint use should include detailed plans of any changes in the plans of the other party which are desired in order to permit

the establishment of joint use. If such other party requests space on the new poles and if the character and number of circuits and attachments are such that the Owner does not wish to exclude the poles from joint use under the provision of Article II, then poles suitable for the said joint use shall be erected in accordance with the provisions and the payment of costs as provided in paragraphs "D", "E" and "F" of this Article.

D. Where additional height poles are requested by Licensee they will be considered as "reserved" for joint use as of the date set, and if reservation is not exercised by the end of the calendar year or within 120 days of the established rental year, the Owner may charge the Licensee in accordance with Paragraph "E".

E. The costs of erecting joint use poles coming under this agreement, either as new pole lines, as extensions of existing pole lines or to replace existing poles, either existing jointly used poles or poles not previously involved in joint use, shall be borne by the parties as follows:

1. A normal joint use pole, or a joint use pole shorter or smaller than the normal pole, shall be erected at the sole expense of the Owner, except as provided in Section "F" of this Article.

2. A pole taller or stronger than the normal joint use pole, the extra height and strength of which is due wholly to the Owner's requirements, shall be erected at the sole expense of the Owner.

3. In the case of a pole taller or stronger than the normal joint use pole, the extra height and strength of which is due wholly to the Licensee's requirements, the Licensee shall pay to the Owner a sum equal to the difference between the actual cost in place of such pole and the cost in place of a normal joint use pole, the rest of the cost of erecting such pole to be borne by the Owner, except as otherwise provided in this Article.

4. In the case of a pole taller or stronger than the normal joint use pole, the extra height and strength of which, it is mutually agreed, is due to the requirements of both parties, the Licensee shall pay to the Owner a sum equal to one-half the difference between the cost in place of such pole and the cost in place of a normal joint use pole, the rest of the cost of erecting such pole to be born by the Owner.

5. In the case of a pole taller or stronger than the normal joint use pole, where height and strength in addition to that needed for the purpose of either or both of the parties hereto is necessary in order to meet the requirements of public authority or of property owners, one-half of the excess cost of such pole due to such requirements shall be borne by the Licensee; the rest of the cost of such pole to be borne by Owner.

6. Whenever the Licensee requests the Owner of an existing or proposed joint use pole line to erect an additional pole which at the time of its erection will not, in the opinion of the Owner, be of direct benefit to the Owner, the Owner shall promptly erect said pole and the Licensee shall pay to the Owner the entire cost of the pole in place plus the associated cost of attaching and/or rearranging the Owner's facilities, if any.

7. Whenever, in any emergency, the Licensee replaces a pole of the Owner, the Owner shall reimburse the Licensee all costs and expenses that would otherwise not have been incurred by the Licensee if the Owner had made the replacement.

8. In cases where existing non-joint use poles are inadequate for the Licensee's requirements and said inadequate poles are replaced, the cost of replacing said poles shall be borne as follows:

   The Licensee shall pay to the Owner: -

   (1) The cost of the new poles in place, plus

   (2) The cost of removal of the existing poles, plus

   (3) The cost of transferring existing attachments, less

   (4) Salvage value of poles and other materials replaced in performing such work. (This salvage value is to be the then full current material cost of replaced items).

F. In any case where a pole is erected hereunder to replace another pole solely because such other pole is not tall enough, or of the required strength, to provide adequately for the Licensee's requirements, and where such other pole, whether it carry space reserved for the Licensee's use or not, had at the time of its erection, been pronounced by the Licensee

as satisfactory and adequate for its requirements, the Licensee shall, upon erection of the new pole, pay to the Owner in addition to any amounts payable by the Licensee under Paragraphs 3, 4, or 5, of Section "E" of this Article, a sum equal to the then value, in place, of the pole which is replaced plus the cost of transferring the Owner's facilities to the new pole, plus the cost of removing the old pole.

G. Any payments made by the Licensee under the foregoing provisions of this Article for taller poles or poles of greater strength than standard are made in order to permit a fixed annual unit rental and do not affect ownership of poles nor total attachment rental payments.

H. When replacing a jointly used pole carrying risers (underground dips) in rigid conduit, the new pole shall be set in the same hole which the replaced pole occupied, unless otherwise mutually agreed upon. For the other attachments the new pole shall be set as close to the old one as practical and still maintain clearances and workman-like appearance.

I. Guy stubs and service poles, necessary for the requirements of the Licensee only, shall be set by the Licensee.

ARTICLE VIII

MAINTENANCE OF POLES AND ATTACHMENTS

A. The Owner shall, at its own expense, maintain its joint use poles in a safe and serviceable condition, and in accordance with Article IV of this agreement and the requirements of the National Electrical Safety Code, and shall replace, subject to the provisions of Article VII, such of said poles as become defective. It is the sole responsibility of the Owner to determine the need for replacement on account of decay.

B. Each party shall, at its own expense, at all times maintain all of its attachments in accordance with Article IV of this agreement and the National Electrical Safety Code and keep them in safe condition and in thorough repair. Pole steps or other climbing aids will not be placed on joint use poles.

C. Whenever it is found necessary to change an existing pole or pole line the parties hereto will so change the existing joint use construction to bring the same in conformity with the governing specifications. All non standard construction and substandard clearances eminently in need of correction shall be remedied forthwith and promptly.

ARTICLE IX

PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

When either party desires to change the character of its circuits on jointly used poles, so that joint use may be undesirable, such party shall give sixty (60) days notice to the other party of such contemplated change and in the event that the other party agrees to joint use with such changed circuits then the joint use of such poles shall be continued with such changes in construction as may be required to meet the requirements of the National Electrical Safety Code. In no case shall a change in distribution voltages be construed as a change in character of circuits. In the event, however, that the other party fails within thirty (30) days from receipt of such notice to agree in writing to such change then both parties shall cooperate and determine the most practical and economical method of effectively providing for separate lines and the party whose circuits are to be moved shall promptly carry out the necessary work.

ARTICLE X

BILLS AND PAYMENTS FOR WORK

Upon the completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other, the party performing the work shall present to the other party, within sixty (60) days after completion of such work, a statement showing the amount due, and such other party shall within thirty (30) days after such statement is presented, pay to the party doing the work the amount due.

ARTICLE XI

ABANDONMENT OF JOINTLY USED POLES

A. If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that

effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, because of, or arising out of, the presence or condition of such pole or any attachments thereon; and shall pay the Owner a sum equal to the then value in place of such abandoned pole, or such other equitable sum as may be agreed upon between the parties. Credit shall be allowed for any payments which the Licensee may have made under the provisions of Article VII "E" and "F" when the pole was originally set, provided the Licensee furnishes proof of such payment.

B. The Licensee may at any time abandon the use of a joint use pole by removing therefrom all its attachments it may have thereon, and giving due notice thereof in writing to the Owner.

ARTICLE XII

RENTAL AND PROCEDURE FOR PAYMENTS

A. The parties contemplate that the use of or reservation of space on poles by each party, as Licensee of the other under this agreement, shall be reciprocal and mutual insofar as this may be practicable.

B. In the event the number of poles occupied by one of the parties as Licensee under this agreement, or specifically reserved for such Licensee's use during any one year, shall exceed the number of poles occupied by the other party, or specifically reserved for such party's use during such year, then the party occupying the greater number of poles as Licensee shall pay to the other party as a rental payment the sum of $3.75 per year for each pole comprising the excess, as hereinafter provided.

C. Within ten days after the first day of each month during which this agreement shall be in effect, each party hereto shall submit to the other a statement setting forth the number of jointly used poles which are owned as of the first day of the month by the party submitting such statement.

D. Within ten days after the receipt of such written statement, the party occupying the greater number of jointly used poles

as Licensee, unless such party shall dispute the accuracy of such statement within five days from receipt thereof, shall pay to the other party a sum equal to one-twelfth of the annual rental payment provided for in Section B of this Article, based on the excess number of poles as shown in such written statement.

E. The first billing under this Article shall be based upon the initial joint inventory accomplished in the common service area of both parties. This billing shall be retroactive to January 1, 1960. The initial inventory determined that there were 18,466 Telephone Company attachments to Electric Company poles and 1,571 Electric Company attachments to Telephone Company poles as of January 1, 1960.

F. During the life of this agreement, unless otherwise agreed upon, subsequent field inventories are to be made at intervals not to exceed three (3) years. Upon completion of such inventories, the office records will be adjusted accordingly and subsequent billing will be based on the adjusted number of attachments. The adjustment in the numbers of attachments is also to be prorated on a straight line basis over the months elapsed since the preceding inventory. Unless otherwise agreed upon, retroactive billing for the prorated adjustment will be added to the normal billing for the month following completion of the field inventory.

ARTICLE XIII

PERIODIC REVISION OF RENTAL PAYMENT RATE

A. At any time after three (3) years from the date of this agreement and at intervals of not less than three (3) years thereafter, the rate per pole which is applied to the excess number of poles for the purpose of computing the rental payment provided for in Article XII of this agreement, shall be subject to revision, upon the written request of either party.

B. If, within Sixty (60) days after receipt of such request by either party from the other, the parties hereto fail to agree upon a revision of such rate, then the rental rate per pole so to be paid shall be an amount equal to 3.393% of the combined total of both companies current cost of their average joint use poles covered by this agreement. For example, for the year 1960, the Electric Company's cost is $79.54, the Telephone Company's cost is $31.00, therefore, $79.54 + $31.00 = $110.54 x .03393 = $3.75, the rental established with this agreement. Upon revision of

The rental payment rate, as herein provided, the new rate agreed upon shall be applicable to the bill next rendered and shall continue in effect until again revised.

ARTICLE XIV

DEFAULTS

A. If either party shall be in default in fulfilling any of its obligations under this agreement and such default shall continue for sixty (60) days after notice thereof in writing from the other party, all rights of the party in default hereunder to make additional attachments, shall be suspended and such suspension shall continue until the party in default shall correct the same and notify the other party in writing to that affect or the other party shall waive such default in writing.

B. If either party shall be in default in the performance of any work or maintenance of records which it is obligated to do under this contract at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. The defaulting party shall make such payment within thirty (30) days after presentation of bills therefor.

ARTICLE XV

LIABILITY AND DAMAGES

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this agreement, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this agreement, the liability for such damages, as between the parties hereto, shall be as follows:

A. Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence or solely by its failure to comply at any time with the specifications as provided herein.

B. Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

C. Each party shall be liable for one-half (1/2) of all damages for such injuries to persons other than employees of either party, and for one-half (1/2) of all damages for such injuries to property not belonging to either party that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

D. Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party hereto shall make any payments to injured employees or to their relatives or representatives in conformity with (1) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, (2) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding paragraphs numbered "A" and "B" and shall be paid by the parties hereto accordingly.

E. All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half (1/2) of the total expense which such settlement of the entire claim against both parties would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

F. In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, including costs, attorneys' fees, disbursements and other proper charges and expenditures.

ARTICLE XVI

EXISTING AND FUTURE RIGHTS OF OTHER PARTIES

A. If either of the parties hereto has, prior to the execution of this agreement, conferred upon others, not parties to this agreement, by contract or otherwise rights or privileges to use any pole covered by this agreement, nothing herein contained shall be construed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges, and to contract or otherwise make arrangements with others not a party to this agreement, for the use of any pole covered or not covered by this agreement; it being expressly understood, however, that for the purpose of this agreement, the attachments of any such other party shall be treated as attachments belonging to the party hereto who made such outside arrangement, and the rights, obligations and liabilities hereunder of such party hereto in respect to such attachments shall be the same as if it were the actual owner thereof.

B. Existing rights of other parties under this Article shall be confined to actual use and no space shall be reserved for the use of such parties unless such reservation is provided in contracts existing on date hereof. Where municipal regulations require either party to allow the use of its poles for fire alarms, police or other like signal systems, such use shall be permitted under the terms of this Article.

ARTICLE XVII

SERVICE OF NOTICES

Whenever in this agreement notice is provided to be given by either party hereto to the other concerning corporate matters of a general nature, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Electric Company at its General Office, or to the Telephone Company at its General Office, as the case may be.

Day by day operational functions shall be carried on between the parties hereto at their respective offices. Either party may from time to time, designate other addresses for the purposes described herein.

ARTICLE XVIII

EFFECTIVENESS AND TERMINATION OF AGREEMENT

This agreement shall become effective as of the first day of January, 1960, and shall continue in full force and effect until the first day of and thereafter until terminated insofar as the making of additional attachments is concerned, by either party giving to the other one (1) year's notice in writing of intention to terminate the right of making additional attachments. Any such termination of the right to make additional attachments shall not, however, abrogate or terminate the right of either party to maintain the attachments theretofore made on the poles of the other, and all such prior attachments shall continue thereafter to be maintained in accordance with the terms of this agreement, which agreement shall, so long as said attachments are continued, remain in full force and effect solely for the purpose of governing and controlling the rights and obligations of the parties with respect to said attachments.

ARTICLE XIX

ASSIGNMENT OF RIGHTS

Except as otherwise provided in this agreement, neither party hereto shall assign or otherwise dispose of this agreement, in whole or in part, without the written consent of the other party; except that either party shall have the right to mortgage any or all of its property, rights, privileges and franchises, to any person or lease or transfer any of the same to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation. In case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to such successors and assigns. Subject to all of the terms and conditions of this agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and with which it is affiliated, or connecting with it, to exercise the rights and privileges of this agreement, in the conduct of said business. For the purpose of this agreement, all attachments maintained on any pole by the permission as aforesaid of either party hereto shall be considered as the attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this agreement, in respect to such attachments, shall be the same as if it were the actual owner thereof.

ARTICLE XX

WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall remain at all times in full force and effect.

ARTICLE XXI

EXISTING CONTRACTS

All existing agreements between the parties hereto for the joint use of wood poles upon any basis within the territory covered by this agreement, are by mutual consent, hereby abrogated and annulled.

ARTICLE XXII

SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing herein shall preclude the parties to this agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed by their respective officers thereunto duly authorized, on the day and year first above written.

WITNESSES:

FLORIDA POWER & LIGHT COMPANY

_____

By _____
Vice President

_____

Attest: _____
Seal

WITNESSES:

Doris E. McCullough

Violet M. Rinkewicz

GENERAL TELEPHONE COMPANY OF FLORIDA

By _____
Vice President

Attest: _____
Asst. Sec.
Seal

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SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing herein shall preclude the parties to this agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed by their respective officers thereunto duly authorized, on the day and year first above written.

WITNESSES:

Eloise Schoneck

Diane Scanlon

FLORIDA POWER & LIGHT COMPANY

By _____
Vice President

Attest: _____
Secretary Seal

WITNESSES:

Doris E. McCullough

Violet M. Reskowski

GENERAL TELEPHONE COMPANY OF FLORIDA

By _____
Vice President

Attest: _____
Asst. Sec. Seal

Exhibit C

Reports of
Joint General Committee
of
Edison Electric Institute
and
Bell Telephone System
on
Physical Relations Between Electrical Supply and Communication Systems

REISSUED
JULY 1945

Additional copies of this report may be obtained by Power Companies from the Edison Electric Institute (Publication No. M5) and by Associated Bell Companies from the Department of Operation and Engineering of the American Telephone and Telegraph Company.

REPORTS OF
JOINT GENERAL COMMITTEE
of
EDISON ELECTRIC INSTITUTE
and
BELL TELEPHONE SYSTEM

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PRINTED IN U. S. A.

JOINT GENERAL COMMITTEE
OF
EDISON ELECTRIC INSTITUTE
AND BELL TELEPHONE SYSTEM

New York, July 9, 1945.

MEMBER COMPANIES OF E.E.I.
ASSOCIATED COMPANIES OF BELL SYSTEM:

For a number of years the following reports of the Joint General Committee of the NELA and Bell Telephone System have formed a satisfactory basis for the coordination of the electrical facilities of electric supply companies and communication facilities of the Bell System.

Principles and Practices for the Inductive Coordination of Supply and Signal Systems — December 9, 1922.

Principles and Practices for the Joint Use of Wood Poles of Supply and Communication Companies — Feb. 15, 1926.

Allocation of Costs Between Supply and Communication Companies — October 15, 1926.

The supply of copies of the original issue of these reports has been exhausted and accordingly they have been reprinted. In this reissue the three reports have been included under a single cover. A few editorial changes have been made which involve no change in substance.

H. B. Bryans

W. H. Sammis

E. C. Stone

Edison Electric Institute Representatives

M. R. Sullivan

K. S. McHugh

Bell System Representatives

JOINT GENERAL COMMITTEE

The Principles and Practices which are now being reissued under a single cover have, during the past two decades, contributed greatly to the successful operations of the power and telephone industries, and because they have promoted cooperation between these industries, they have benefited the general public. It seems appropriate in connection with this reissue to review the development of these Principles and Practices however, for brevity, omitting mention of all but the original organization.

Previous to 1921, structural and inductive interference problems were giving rise to increasing numbers of controversies between Bell Telephone Companies and Power Companies throughout the country. Early in 1921, therefore, a group of power and telephone men met to discuss the possibilities of a basis for an engineering solution of the problems concerned. Mr. Owen D. Young presided at that meeting and there was formed the Joint General Committee of the National Electric Light Association and Bell Telephone System with the following membership:

Messrs. O. D. YOUNG, *Chairman*,
General Electric Company,

R. H. BALLARD,
Southern California Edison Company,

M. R. BUMP,
H. L. Doherty & Company,

H. M. BYLLESBY, Represented by R. F. Pack,
H. M. Byllesby & Company,

J. J. CARTY,
American Telephone and Telegraph Company,

BANCROFT GHERARDI,
American Telephone and Telegraph Company,

E. K. HALL,
American Telephone and Telegraph Company,

L. H. KINNARD,
The Bell Telephone Company of Pennsylvania,

MARTIN J. INSULL,
Middle West Utilities Company,

ROBERT LINDSAY,
Cleveland Electric Illuminating Company,

BEN S. READ,
The Mountain States Telephone and Telegraph Company,

PAUL SPENCER,
United Gas Improvement Company,

GUY E. TRIPP,
Westinghouse Electric & Manufacturing Company,

M. H. AYLESWORTH, *Secretary*,
National Electric Light Association,

Messrs. Bump, Pack and Gherardi were designated as an Engi-

neering Subcommittee representing both interests with instructions to classify the types of situations in which engineering or technical conflicts were arising. They selected a committee of engineers whose instructions were to proceed with a classification of the types of problems concerned under two divisions (a) those for which a standard had been accepted by both parties and (b) those for which there were no existing standards. Their further instructions were to approach the various problems in the broadest possible spirit of cooperation, with the double objectives of the removal of causes of friction and the early development of mutually satisfactory practices. This committee of engineers consisted of Messrs. H. P. Charlesworth, S. P. Grace, H. S. Osborne and H. S. Warren, representing the Bell Telephone System and Messrs. W. J. Canada, A. E. Silver and F. H. Lane, representing the NELA. Mr. H. L. Wills later succeeded Mr. Canada.

The Engineering Subcommittee in its first report found that the National Electrical Safety Code provided an acceptable guide to practice for problems involving crossings, conflicting construction and jointly occupied poles, and recommended, as to parallel construction, general principles pointing the way to the satisfactory solution of specific cases. After further work the subcommittee prepared the more comprehensive reports which are generally known as the Principles and Practices, and which with minor editorial changes are reproduced in this booklet.

Early in its work the Engineering Subcommittee found that there was need for mutually acceptable technical data to aid in the solution of both electrical and structural coordination problems. Accordingly, the Joint Subcommittee on Development and Research was organized in 1923. Its factual reports have greatly facilitated the solution of coordination problems by the power and telephone companies and have enabled them to arrive at sound engineering answers to the new problems which have accompanied advances in the power and communication arts.

FOR THE
INDUCTIVE COORDINATION OF SUPPLY AND COMMUNICATION SYSTEMS

Scope.

These principles and practices are intended to apply to all new installations, extensions and reconstructions and to the maintenance, operation and changes of all communication and supply systems where inductive coordination may be required now or later to prevent interference with the rendering or providing of supply or communication service.

PRINCIPLES

Duty of Coordination.

(a) In order to meet the reasonable service needs of the public, all supply and communication circuits with their associated apparatus should be located, constructed, operated and maintained in conformity with general coordinated methods which maintain due regard to the prevention of interference with the rendering of either service. These methods should include limiting the inductive influence of the supply circuits or the inductive susceptiveness of the communication circuits or the inductive coupling between circuits or a combination of these, in the most convenient and economical manner.

(b) Where general coordinated methods will be insufficient, such specific coordinated methods suited to the situation should be applied to the systems of either or both kinds as will most conveniently and economically prevent interference, the methods to be based on the knowledge of the art.

Cooperation.

In order that full benefit may be derived from these principles and in order to facilitate their proper application, all utilities between whose facilities inductive coordination may now or later be necessary, should adequately cooperate along the following lines:

(a) Each utility should give to other utilities in the same general territory advance notice of any construction or change in construction or in operating conditions of its

facilities concerned, or likely to be concerned, in situations of proximity.

(b) If it appears to any utility concerned that further consideration is necessary, the utilities should confer and cooperate to secure inductive coordination in accordance with the principles set forth herein.

(c) To assist in promoting conformity with these principles, an arrangement should be set up between all utilities whose facilities occupy the same general territory, providing for the interchange of pertinent data and information including that relative to proposed and existing construction and changes in operating conditions concerned or likely to be concerned in situations of proximity.

Choice Between Specific Methods.

When specific coordinated methods are necessary and there is a choice between specific methods, those which provide the best engineering solution should be adopted.

(a) The specific methods selected should be such as to meet the service requirements of both systems in the most convenient and economical manner without regard to whether they apply to supply systems or communication systems or both.

(b) In determining what specific methods are most convenient and economical in any situation for preventing interference, all factors for all facilities concerned should be taken into consideration including present factors and those which can be reasonably foreseen.

(c) In determining whether specific methods, where necessary, shall be wholly by separation or partly by methods based on less separation, the choice should be such as to secure the greatest present and future economy and convenience in the rendering of both services.

Inductive Coordination for Existing Construction.

(a) Utilities operating supply or communication circuits should exercise due diligence in applying coordinated methods, as occasion may rise, in accordance with these principles, to existing construction.

(b) When supply or communication circuits are generally reconstructed, or when associated apparatus is rearranged or added, or when any change is made in the arrangement or characteristics of circuits, the new or changed parts should be brought into conformity with these principles.

Coordinated Locations for Lines.

Utilization of the highways is essential to the economical and efficient extension, operation and maintenance of supply and communication facilities. To avoid unduly increasing the number or difficulty of situations of inductive or other exposure incident to the use of the same highway by two different kinds of facilities, all lines should, in general, be located as follows:

(a) GENERAL LOCATION.

(1) Where the conditions and character of the circuits permit, joint use of poles by communication and supply circuits is generally preferable to separate lines when justified by considerations of safety, economy and convenience, and presuming satisfactory agreement between the parties concerned as to terms and conditions.

(2) Where communication circuits and supply circuits on the same highway are not to occupy joint poles or where either kind of circuit is alone on a highway, all communication circuits should be placed on one side of the highway and all supply circuits should be placed on the other side, so that, as far as practicable, one side of any section of a highway will be available as the communication side and one side as the supply side.

(3) Unnecessary crossings from side to side of the highway should be avoided.

(b) DETAILED LOCATION.

(1) Local Communication Lines.

Where to be located on the same highway with local supply lines, joint use is generally preferable to separate lines, except sometimes in rural districts and except where the character of circuits involved makes separate lines on opposite sides of the highway more desirable.

Where to be located on the same highway with transmission lines, separate lines on opposite sides of the highway are generally preferable unless a large number of service wire crossings would be involved, in which case, joint use or other arrangements may be preferable.

(2) Toll or Through Communication Lines.

Where to be located on the same highway with local supply lines or lower voltage transmission supply lines, separate lines on opposite sides of the highway are generally preferable, unless a large number of service wire crossings would be involved, in which case, joint use or other arrangements may be preferable.

Where proposed for location on the same highway or to follow the same general direction with higher voltage transmission supply lines, cooperative consideration should determine whether such locations should be used, and if so, what specific coordinated methods are necessary. Where to be located on the same highway with higher voltage transmission supply lines, separate lines on opposite sides of the highway are preferable.

(3). Local Supply Lines.

Where to be located on the same highway with local communication lines, joint use is generally preferable to separate lines except sometimes in rural districts and except where the character of circuits involved makes separate lines on opposite sides of the highway more desirable.

Where to be located on the same highway with toll or through communication lines, separate lines on opposite sides of the highway are generally preferable, unless a large number of service wire crossings would be involved, in which case, joint use or other arrangements may be preferable.

(4) Transmission Supply Lines.

Where to be located on the same highway with local communication lines or shorter toll or shorter trunk communication lines, separate lines on opposite sides of the highway are generally preferable unless a large number of

service wire crossings would be involved, in which case, joint use or other arrangements may be preferable.

Where proposed for location on the same highway or to follow the same general direction with longer toll or through communication lines, cooperative consideration should determine whether such locations should be used and if so, what specific coordinated methods are necessary. Where to be located on the same highway with longer toll or through communication lines, separate lines on opposite sides of the highway are preferable.

(5) Avoidance of Overbuilding.

Overbuilding of one line by another should be avoided, where practicable. Where necessary for the two kinds of lines to occupy the same side of a highway, joint use is generally preferable to overbuilding.

(c) Other Rights of Way.

The foregoing principles, although specifically mentioning highways, should also, when applicable, govern situations involving private rights of way near to each other or to highways.

Deferred General Coordination.

While communication or supply lines when alone should conform to general coordinated methods, such lines, pending the incoming or development of the other kinds of lines, may, if deemed economically advantageous, occupy locations or use types of facilities, construction and operating methods other than those conforming to general coordinated methods. However, the location and character of such facilities should be altered when and as necessary to conform to these methods upon the incoming or development of another kind of facility conforming to general coordinated methods.

Special Location and Types.

When coordination of supply and communication lines of particular types cannot be technically and economically established under the methods of coordination covered by these principles, special cooperative consideration should be given to determining what location and type of construction should be established for each line of such type.

PRACTICES

INTRODUCTORY.

These recommended practices supplement, and are intended to be in accord with, the principles given in the foregoing. They are based on experience, and their application, in connection with the principles on "Coordinated Location of Lines" will effectively promote the inductive coordination of supply and communication systems.

In the development of these detailed practices, it has been found advisable to proceed step by step along two well defined subdivisions, namely, practices based on qualitative considerations, and those based on quantitative values. The practices given herewith cover qualitative considerations and form a basis for the later adoption of definite quantitative values where they may properly apply. It is recognized that in the growth and development of the respective utilities and as the development of the art progresses, other satisfactory methods will doubtless be devised. The fact that particular methods are specified herein does not preclude the use of other mutually satisfactory methods, nor their incorporation in these practices as they may be agreed upon.

In order that the above considerations may be carried out it is intended that the joint work on practices will be continued and that additional material will be issued from time to time as it becomes available. In the preparation of these practices, certain factors were encountered which, due to lack of complete information, could not be as fully covered at this time as their importance in inductive coordination merits. Among these factors are included certain features of the protection of communication systems, the selectivity of communication apparatus, the transposing of supply circuits outside of inductive exposures and the question of single versus multiple grounding in supply systems.

In order that the full intent of the principles may be carried out, the practices hereinafter specified as "General Coordinated Methods" should be applied to all communication and supply systems, except as deviations may be made under the principle of "Deferred Coordination." In cases of inductive exposure, where these general coordinated methods are insufficient, such of the practices hereinafter specified as "Specific Coordinated

Methods" should, in addition, be applied as will provide the best engineering solution.

MUTUALLY APPLICABLE PRACTICES

Notice and Cooperation.

Utilities between whose facilities inductive coordination is, or later may become, necessary should each give to the other advance notice of any construction or changes in construction or operation of their respective facilities. The utilities should cooperate in determining and carrying out those methods which provide the best engineering solution in each case, and to this end there should be complete interchange of information.

Limitation of Influence and Susceptiveness.

In designing, specifying or otherwise determining the location, construction and arrangement of supply or communication circuits or the quality, arrangement and suitability of materials or apparatus to be used in, or associated with, communication or supply circuits and in operating and maintaining lines and apparatus, all factors which would contribute to inductive influence or inductive susceptiveness during either normal or abnormal conditions should be limited in so far as is necessary and practicable.

Changes in Systems or Methods.

In changing systems or methods of operation, precaution should be taken to avoid increasing, and an effort made to decrease, if practicable, the influence or susceptiveness. Any abnormal condition which increases these factors should be promptly remedied. If the service requirements prevent a prompt remedy of such condition, effort should be made to reduce these effects by such other methods as are available.

Operating Instructions.

Communication companies should adopt operating instructions, specifically outlining the procedure for notification of supply companies when inductive disturbances arise on toll circuits that appear to be incidental to abnormal power influence and supply companies should adopt operating rules which outline the desirable procedure for their operators during times when a supply circuit is abnormally unbalanced.

Records.

A record should be kept by the communication companies of disturbances on communication circuits, and the supply companies should keep a record of accidental or transient conditions on supply circuits, so that a study of such disturbances which appear to be due to accidental or transient conditions will be facilitated.

Mechanical Construction.

The mechanical design and construction of communication and supply systems should conform to good modern practice.

Maintenance.

Efforts should be made to anticipate and forestall failure of lines or equipment. Defective equipment should not be continued in service and repairs or renewals should be promptly made.

Tree Trimming.

Trees should be trimmed as necessary, due consideration being given clearances to meet weather conditions. Due diligence should be exercised in obtaining permission to trim trees when such permission is needed and such trimming should be done in accordance with good modern practice.

Insulation.

Insulators and insulating material used on communication and supply circuits should be designed, constructed and maintained so as to provide adequate mechanical and electrical strength.

PRACTICES APPLICABLE TO COMMUNICATION SYSTEMS

General Coordinated Methods

The following practices should be applied to all communication systems, except as deviations may be made under the principle of deferred coordination.

Power Level and Sensitivity.

The power level and sensitivity of communication circuits should be, so far as is practicable, designed and maintained at the standard recommended for the class of service involved.

Protection.

Protective devices should be such that they will not interrupt the communication circuits by operating at unnecessarily low voltages or currents.

Protective devices should be, so far as practicable, so designed, constructed and installed as not to unbalance the communication circuits.

The same type of heat coil or fuse should be used in all wires of a circuit.

Reasonable care should be used in the maintenance of all protective apparatus to avoid conditions which will unbalance or interrupt the communication circuits.

Inspections.

Adequate field inspection and routine tests of lines and apparatus should be made with a view to maintaining the electrical balance and efficiency of the circuits.

Discontinuities.

Discontinuities should be limited to the number required by the conditions.

LINES.

In order to minimize line unbalances, the resistance, inductance, capacitance and leakage conductance of one side of a circuit, in each section thereof, should be equal respectively to the corresponding quantities in the other side of the same section of the circuit in so far as is necessary and practicable.

Some of the methods and means which should be followed for the purpose of minimizing unbalance in lines are as follows:

Transpositions.

The capacitances to earth of the two sides of a telephone circuit should be suitably balanced by transpositions. Before a communication line is placed in service, a check should be made to insure that the transpositions are properly installed and correctly located.

Excessive Spacing.

Excessive spacing of conductors should be avoided. This does not mean that the spacing should be less than that required by considerations of safety, service and the future requirements of the circuits.

Derived Circuits.

In the creation of circuits from one or more circuits without adding line conductors, due regard should be given to avoiding unnecessary increases in susceptiveness.

Phantom circuits should be created only from similar adjacent pairs. Branches connected to but one side of a phantom circuit should be avoided unless connected through isolating transformers.

If one side circuit of a phantom group is loaded, the other side should be loaded at the same loading points, such loading to have closely the same electrical characteristics.

Phantom circuits should in general be used only for toll or trunk circuits except in cases of long rural circuits.

Connections.

Effort should be made to prevent the introduction of unbalance by contact resistance.

All joints in toll cables should be soldered or welded. All joints in open-wire toll conductors should be made with sleeves or should be well soldered or welded.

All wires should be properly cleaned to secure good contact before the joints are made.

All test connections, terminal boxes and associated wiring should be designed, constructed, installed and maintained so as to minimize the unbalances of the conductors.

Conductors.

Conductors of the same material and commercial size should be used in the two sides of the circuit at any point.

Ground Return Circuits.

Ground return telephone circuits should not be employed.

Use of Cable.

Consideration should be given to placing circuits in cable at the time of rebuilding heavy open wire subscribers' lines.

APPARATUS.

All apparatus electrically connected to a communication circuit should be so designed, constructed, installed and maintained as to minimize, in so far as is necessary and practicable, unbalance of the series impedance and admittance to earth of the two sides of the circuit.

Some of the methods and means which should be followed for the purpose of minimizing unbalance in equipment are as follows:

Phantom Circuit Apparatus.

Balancing resistance or other compensating apparatus should be inserted in the through side of a phantom group at the point where the other side circuit is terminated.

If one circuit of a phantom group is equipped with composite sets or composite ringers, the other side should be similarly equipped and the sets or ringers used on the two sides of the phantom group at any given point should have closely the same impedance characteristics.

Series Apparatus.

Where series apparatus, such as series condensers of a composite set is applied to toll circuits, those parts inserted in each side of a circuit should have closely the same electrical characteristics.

Coils.

Loading coils should be so designed, constructed and installed as to insert closely equal impedance in each wire of a circuit. Loading coils should be located as nearly as practicable at neutral or balanced points of the transposition system. In the design, construction, installation and maintenance of loading coils, efforts should be made to secure permanency of characteristics.

The coils employed for phantoming, compositing, simplexing or sectionalizing communication circuits should be as closely balanced as practicable. If in any case unbalanced coils are necessary, they should be isolated by properly balanced repeating coils.

The windings of retardation coils connected to the two sides of the same metallic circuit should have closely equal self-impedances. The coils of the different circuits should be equipped with suitable cases or so installed as to have negligible mutual impedances.

Condensers.

The condensers employed in composite sets, signaling devices, etc., should have adequate balance of admittance to ground.

Ringing and Signaling Equipment.

The unbalance introduced by ringing or signaling equipment should be limited, in so far as is necessary and practicable.

Central Office Circuits.

Central office circuits are to be so designed, installed and maintained that any connection between toll circuits and subscribers' circuits may be made through repeating coils.

Attention should be given to the control of unbalance in cords and central office wiring.

Effort should be made to prevent the introduction of unbalance by contact resistance.

Ground Connections.

Ground connections, if employed on equipment connected to toll circuits, should be in the balanced or neutral position of the circuit.

Specific Coordinated Methods

The specific practices outlined here are to be used in addition to the general practices to supplement the latter in so far as may be necessary and practicable in cases where communication and supply lines are involved, or are about to be involved, in inductive exposures.

All of these practices are not required to be applied in any one specific case, but in each instance that practice or those practices in combination should be selected which will under the conditions afford the best engineering solution.

Power Level and Sensitivity.

Consideration should be given to maintaining in the communication circuits as high a power level and such a degree of sensitivity as is consistent with good economics.

Selective and Other Special Devices.

Consideration should be given to the use of such devices as neutralizing transformers, sectionalizing transformers, filters, resonant shunts or drainage coils in any case where they may offer benefit and the service requirements of the circuit will permit.

Rerouting Service.

If abnormal conditions should temporarily prevent the use of a certain line and the effect of the abnormal conditions can be

avoided only by temporarily rerouting the supply or communication service over a route not involved in the inductive exposure, consideration should be given to the adoption of this expedient. Where the rerouting of either service is impracticable, the choice as to which service is to be temporarily suspended should be governed by the relative importance to the public of the respective services affected.

Records.

Routine measurements of insulation, conductor resistance, balance and induction should be made on toll circuits involved in inductive exposures and records kept of the readings.

A record should be kept of abnormal conditions in toll circuits involved in inductive exposures where a study of such conditions is advisable. Such records should as fully as practicable include time, duration, circuit designation, location, probable cause and effect of the abnormal condition and how the circuits were cleared.

All the above records or a convenient summary thereof should be available for the purpose of analyzing causes and effects of disturbances.

LINES.

Configuration.

Where service requirements permit a choice of configuration of a communication circuit or a group of communication circuits consideration should be given to the selection of a configuration such as to limit susceptiveness.

Cable.

Consideration should be given to the use of cable within an inductive exposure.

Where communication circuits are carried in aerial cable, consideration should be given to the use of properly arranged and installed grounds on cable sheaths or other methods of shielding.

Coordinated Transpositions.

Consideration should be given to the use of transpositions in supply or communication circuits, or both, within inductive exposures, for the purpose of limiting the coupling. Such transpositions should be installed at suitable intervals, the location to be

such as the local conditions demand. Where transpositions are installed in both supply and communication circuits within inductive exposures, they should be properly coordinated.

Note. Care should be taken in the installation of transpositions that, so far as practicable, the transpositions are located nearest the theoretically correct point. In determining the most economical scheme of transpositions effort should be made to utilize as many as practicable of any existing transpositions. Where the transpositions required within an inductive exposure impair the general transposition scheme of communication or supply circuits outside the limits of inductive exposure, the necessary readjustment of transpositions should be made in the section or sections of line adjacent to inductive exposure. Uniformity of separation generally assists in the attainment of coordination. If discontinuities are of sufficient magnitude to substantially affect the coupling, sections between such points should be treated independently.

Apparatus.

Party Line Ringers.

Consideration should be given to the use of high impedance substation party line ringers or their equivalent.

Central Office Equipment.

Consideration should be given to equipping toll circuits which may be switched to other toll circuits with repeating coils. In those cases where the design of a central office is such that there is a possibility that toll circuits may be switched directly to local circuits, consideration should be given to the use of repeating coils if their omission would contribute to interference.

Where series apparatus is applied to local communication circuits, consideration should be given to so arranging it that equal impedances are inserted in each side of the circuit where necessary and practicable.

Ground Connections.

Ground connections if employed on equipment connected to local communication circuits should so far as is practicable be at neutral or balanced points.

PRACTICES APPLICABLE TO SUPPLY SYSTEMS

General Coordinated Methods

The following practices should be applied to all supply systems except as deviations may be made under the principle of deferred coordination.

Residual Voltages and Currents.

Residual voltages and currents should be limited as far as is necessary and practicable.

Unsymmetrical loads between phases should be avoided in so far as is practicable where they would give rise to residual currents or voltages.

NOTE: Circuit conditions may cause a residual voltage to appear on a three-phase system. If the neutral of the system is grounded at one point, residual current may flow and the residual voltage may be increased or decreased. In this case, the residual current may consist in part of current through the total direct admittance of the system to ground due to voltages impressed between the three conductors and ground. It may also consist in part of unbalanced charging current to ground due to voltages impressed upon unbalanced direct admittances of the three conductors to ground. The former will not be affected by transpositions while the latter may be reduced or eliminated by equalization of the conductor admittances to ground.

If the system is operated without a neutral ground, the residual voltage would be reduced by equalizing the admittances of the conductors to earth.

If the phases are not symmetrically loaded and two or more neutrals of the same electrically connected system are grounded, residual currents will flow. However, substantial residual currents due to unsymmetrical loads will not flow if the system has a single or no neutral ground.

Single phase taps from 3-phase circuits have inherently a residual voltage; such taps, if long, tend to appreciably unbalance the 3-phase circuit to which they are connected.

If the neutral of a system is grounded at two or more points, the residual voltage or the residual current may be increased or decreased. Whether the total influence of the system is increased or decreased will depend upon local conditions.

Discontinuities.

Discontinuities should be limited to the number required by the conditions.

Switching.

In all switching operations care should be taken to limit, so far as is practicable, the production of transient disturbance leading to excessive momentary influence.

Care should be taken to avoid repeatedly energizing at normal voltage a transmission supply circuit in order to locate a fault. It is sometimes practicable to locate such faults by means of lower voltage testing methods.

Maintenance.

In the maintenance of supply circuits, attention should be given to the prevention of mechanical or electrical failures which would lead to residual voltages or residual currents of substantial magnitude. When supply circuits become unbalanced, due to any

cause, every reasonable effort should be made to remedy the unbalanced condition promptly.

Contact Resistance.

Care should be taken to avoid contact resistance which would affect influence.

LINES.

In order to reasonably limit the residual current and voltages arising from line unbalances, the resistance, inductance, capacitance and leakage conductance of the several conductors in each section of a circuit should, so far as is necessary and practicable, be equal respectively to the corresponding quantities in any other conductor of the same section of the circuit.

Some of the methods and means for limiting unbalance in lines are described below.

Configuration.

Where there is a choice between two or more types of configuration, consideration should be given to use where practicable of such configuration of a supply circuit or a group of supply circuits as provides the superior balance.

Excessive Spacing.

Excessive spacing of conductors should be avoided. This does not mean that the spacing should be less than required by considerations of safety, service, and the future requirement of the circuits.

Transpositions.

Capacitances to earth of the conductors of transmission supply circuits should be suitably balanced by transpositions so far as is necessary and practicable.

Branch Circuits.

Where branches employing less than the total number of phase wires are to be used, they should be so planned as not to give rise to excessive residual voltages or currents on the three-phase system.

Series Lighting Circuits.

In the construction or rearrangement of series street lighting circuits, unbalances which materially contribute to inductive influence should be avoided.

Three-Phase, Four-Wire Systems.

If three-phase, four-wire grounded neutral supply circuits are used, the neutral wire should be continuous except in case of a three-phase branch which is either operated non-grounded or is grounded only at symmetrical load points.

Ground Return Circuits.

Ground return circuits or ground return branches of multi-wire supply circuits should not be employed. This does not apply to track return circuits.

APPARATUS.

NOTE: It is recognized as commercially impossible to build rotating machinery entirely free from harmonics. It is further recognized that some distortion of wave form—and consequent introduction of harmonics—is inherent with power transformers which must employ iron in their magnetic circuits. However, in both these cases the introduction of harmonics can, to a considerable extent, be controlled within the limits of commercial design and practice. So, the above provisions are intended to secure the attention which this matter deserves because of its basic importance and its reaction on the necessity for other methods.

Rotating Machinery.

Synchronous machines should be specified and selected so as to have a wave form in which the harmonic components are limited so far as necessary and practicable.

Induction motors and generators should be selected which cause the least practicable amount of harmonic voltages and currents on the system to which they are connected.

Transformers.

In order that the wave form of voltage and current may be affected as little as practicable by transformers, such apparatus should not be designed so as to operate at excessive magnetic densities. In the installation, connection, and operation of transformers, care should be taken to avoid excessive over-voltages or excessive magnetizing currents.

When star connected transformers or autotransformers are employed with a grounded neutral on the side connected to a line circuit, low impedance closely coupled tertiary windings or delta-connected secondary windings, or other suitable means for adequately limiting the triple harmonic components of residual current or voltages should be employed.

Where open delta transformer banks are used, they should be distributed symmetrically among the phases in so far as necessary and practicable.

Care should be taken that the individual units in each grounded neutral bank of transformers connected to a transmission supply circuit are substantially alike as to electrical characteristics and that they are similarly connected.

Switches.

Each switch controlling the supply of energy to transmission supply circuits should have all poles arranged for gang operation. So far as is practicable, these switches should be automatic for short circuits between phases and from phase to ground.

Protective Apparatus.

Protective apparatus should be such that it will not unnecessarily add to transient disturbance, and should so far as practicable forestall or limit such transient disturbances.

Routine inspection of lightning arresters should be provided, and the periodic charging, where such is required, should conform to good practice.

Arresters should be maintained in good condition. Arresters which have been temporarily withdrawn from service should not be replaced in service until they are in proper operating condition.

Where lightning arresters requiring periodic charging are employed on a supply system involved in an inductive exposure, they should be equipped with auxiliary resistances and contacts.

Routine inspection or tests should be made to determine whether or not adjustments in all protective apparatus are properly maintained.

Abnormal Conditions.

Reasonable means should be provided to prevent the continuation in operation of faulty apparatus or lines for such periods or under such conditions as lead to excessive influence.

Reliable indicating or recording devices should be installed at the source of transmission supply circuits to show abnormal operating conditions.

Series Lighting Circuits.

Consideration should be given to the use of types of equipment in series street lighting circuits which, so far as practicable, have a minimum distorting effect on the voltage and current wave

shape of the lighting circuit, both during times of normal operation and times of lamp outages.

Ground Connections.

Ground connections, if employed on apparatus connected to transmission supply circuits, should be made in the balanced or neutral position in the circuit. This precludes the use of grounded open star transformer connections.

Specific Coordinated Methods

The specific practices outlined herein are to be used in addition to the general practices to supplement the latter so far as may be necessary and practicable in cases where communication and supply lines are involved, or are about to be involved, in inductive exposures.

All of these practices are not required to be applied in any one specific case, but in each instance that practice or those practices in combination should be selected which will under the conditions afford the best engineering solution.

Lines.

Configuration.

Where physical and economic conditions permit a choice of configuration of supply circuits within inductive exposures the configuration should be selected so as to limit the influence.

Branch Circuits.

Consideration should be given to the isolation of branch circuits consisting of less than the total number of wires of the main circuit, resulting in substantial balance, by means of transformers when such main or branch circuits are involved in inductive exposures.

Consideration should be given to the isolation of loops of series lighting circuits.

Coordinated Transpositions.

Consideration should be given to the use of transpositions in supply or communication circuits, or both, within inductive exposures, for the purpose of limiting the coupling. Such transpositions should be installed at suitable intervals, the location to

be such as the local conditions demand. Where transpositions are installed in both supply and communication circuits within inductive exposures, they should be properly coordinated.

NOTE: Care should be taken in the installation of transpositions that where practicable the transpositions are located nearest the theoretically correct point. In general, transpositions may be omitted at the junction points of successive sections which are suitably balanced. In determining the most economical scheme of transpositions effort should be made to utilize as many as practicable of any existing transpositions. Where the transpositions required within an inductive exposure impair the general transposition scheme of communication or supply circuits outside the limits of inductive exposure, the necessary readjustment of transpositions should be made in the section or sections of line adjacent to inductive exposure. Uniformity of separation generally assists in the attainment of coordination. If discontinuities are of sufficient magnitude to substantially affect the coupling, sections between such points should be treated independently.

Rerouting Service.

If abnormal conditions should temporarily prevent the use of a certain line and the effect of the abnormal conditions can be avoided only by temporarily rerouting the supply or communication service over circuits not involved in the inductive exposure, consideration should be given to the adoption of this expedient. Where the rerouting of either service is impracticable the choice as to which service is to be temporarily suspended should be governed by the relative importance to the public of the respective services affected.

APPARATUS.

Wave Shape.

Where a ground connection used on the armature winding of an alternating current generator or motor electrically connected to supply circuits results in triple harmonics on circuits involved in inductive exposures, means should be employed to reduce the triple harmonics as far as may be necessary and practicable.

Rectifiers, arc furnaces and other apparatus which distort the voltage or current wave form of a supply circuit involved in an inductive exposure, should be equipped when and as necessary and practicable with suitable auxiliary apparatus to prevent such distortion.

Where the service conditions permit, consideration should be given to special means and devices for reducing the amplitude of harmonics on systems involved in inductive exposures.

Reasonable efforts should be made to promptly replace outlamps on circuits equipped with individual transformers or bridged reactance coils.

Transformers.

Consideration should be given to the use of closed delta connection on main transformer supply banks or large distribution banks where necessary and practicable in preference to open delta.

Lightning Arresters.

Where, notwithstanding compliance with the paragraph regarding equipment of the arresters, interference arises at time of charging lightning arresters, charging should be done at such times as will result in minimum interference to both services.

Switches.

Consideration should be given to the installation of at least one oil-break switch, or its approved equivalent, to control the supply circuit involved in an inductive exposure.

Current Limiting Devices.

Consideration should be given to the use, so far as necessary and practicable, of current limiting devices in either the line wires or the neutral of transmission supply circuits.

Ground Connections.

Ground connections if employed on apparatus connected to local supply circuits should, so far as practicable, be made at the neutral or balanced point of the circuit.

Records.

A record should be kept of all abnormal conditions on transmission supply circuits involved in inductive exposures, where a study of such conditions is advisable. Such records should, as fully as practicable, include time and duration, circuit designation, location, probable causes and effect of abnormal conditions and how cleared.

All of the above records, or a convenient summary thereof, should be available for the purpose of analyzing cause and effect of disturbances.

DEFINITIONS

For the purpose of these principles and practices, the following terms are used with meanings as given in these definitions:

Inductive Coordination.

The location, design, construction, operation and maintenance of supply and communication systems in conformity with harmoniously adjusted methods which will prevent inductive interference.

General Coordinated Methods.

Those methods reasonably available for general application to supply or communication systems, which contribute to inductive coordination without specific consideration to the requirements for individual inductive exposures.

Specific Coordinated Methods.

Those additional methods applicable to specific situations where general coordinated methods are inadequate.

Inductive Interference.

An effect arising from the characteristics and inductive relations of supply and communication systems of such character and magnitude as would prevent the communication circuits from rendering service satisfactorily and economically if methods of inductive coordination were not applied.

Inductive Exposure.

A situation of proximity between supply and communication circuits under such conditions that inductive interference must be considered.

Inductive Susceptiveness.

Those characteristics of a communication circuit with its associated apparatus which determine, so far as such characteristics can determine, the extent to which it is capable of being adversely affected in giving service, by a given inductive field.

Inductive Influence.

Those characteristics of a supply circuit with its associated apparatus that determine the character and intensity of the inductive field which it produces.

Inductive Coupling.

The interrelation of neighboring supply and communication circuits by electric or magnetic induction or both.

Configuration.

The geometrical arrangement of the conductors of a circuit including the size of the wires and their relative positions with respect to other conductors and the earth.

Electrically Connected.

Connected by means of a conducting path or through a condenser as distinguished from connection merely through electromagnetic induction.

Transposition.

An interchange of position of conductors of a circuit between successive lengths.

Coordinated Transpositions.

Transpositions which are installed in either supply or communication circuits or in both for the purpose of reducing inductive coupling and which are located effectively with respect to the discontinuities in both the supply and communication circuits.

Discontinuity.

A point at which there is an abrupt change in the physical relations of supply and communication circuits or in electrical constants of either circuit which would materially affect the coupling.

Transpositions are not rated as discontinuities, although technically included in the definition, because of their application to coordination.

Residual Voltage.

The residual voltage of a supply circuit is the vector sum of the voltages to ground of the several wires. In a three-phase system it is in effect a single phase voltage equal to one-third of the residual voltage, impressed between the wires in multiple and the ground.

Residual Current.

The residual current of a supply circuit is the vector sum of the currents in the several wires and is equivalent to a single phase current having the wires in multiple as one side and the ground as the other.

Power Level.

The level of the electrical power flowing in a communication circuit. At any point the power level depends on the conditions of input and of losses between the point of input and the designated point.

In telephone practice the power level of a circuit is usually referred to the power level in a given circuit assuming that the acoustic input into the circuit under consideration is of a given amount and the same as the input into the reference circuit.

Sensitivity.

The sensitivity of a telephone circuit or a part thereof is the ratio of the electrical or the acoustic output to the electrical input.

Selectivity.

That property of apparatus or a circuit which permits the transmission or conversion of currents of different frequencies in differing degrees.

INDUCTIVE COORDINATION
ALLOCATION OF COSTS
BETWEEN
SUPPLY AND COMMUNICATION COMPANIES

The Reports of the Joint General Committee on Principles and Practices for Inductive Coordination have established the broad basis for the solution of inductive coordination problems from a physical standpoint based on the present state of the art. From the start, however, it has been recognized that the question of allocation of costs enters into the problem in an important way and in this connection the letter transmitting the first report contained the following statement:

> "Your Committee, as soon as standards of construction and operation are adopted, will consider whether principles can be established to aid in the fair allocation of costs of coordinative measures. In the meantime, your Committee believes that with the cooperative spirit which now is evident a mutually equitable adjustment can and should be made in each specific case. It is understood that any adjustments made will not be considered as precedents by either party to the prejudice of future understandings."

It is understood that, generally speaking, the respective utilities have been handling the allocation of costs in specific cases along the above recommended lines. However, in some cases difficulty has been encountered in endeavoring to reach an equitable adjustment; in fact, negotiations regarding the allocation of costs have in some cases unduly influenced the technical work on the specific situations involved and have tended to retard or prevent agreement on the best engineering solution.

This question has received careful consideration for some time and as a result certain suggestions have been made which will be helpful to the supply utilities and communication utilities as a guide in arriving at an equitable apportionment of the costs of

methods of inductive coordination in situations where the two utilities have not already arrived at a mutually satisfactory plan for handling the allocation of costs.

In arriving at conclusions on this matter of allocation of costs, the following were carefully considered. The solution to the problem of inductive coordination should, of course, be based on the service needs of both parties and on the overall cost rather than on any consideration of in what plant the changes shall be made or how the costs are to be allocated. This is in accordance with the section on "Choice Between Specific Methods" contained in the Principles and Practices for the Inductive Coordination of Supply and Communication Systems and it is obvious that the approach to the problem should be such as to offer every incentive to obtaining the best engineering solution. It was the consideration of these facts that suggested the method herein outlined for the allocation of costs.

As has been stated in previous reports, each party should be the judge of its own service requirements but as covered in the Principles and Practices above referred to, each party also has a duty of coordination as shown by the following quotation:

> "In order to meet the reasonable service needs of the public, all supply and communication circuits with their associated apparatus should be located, constructed, operated and maintained in conformity with general coordinated methods which maintain due regard to the prevention of interference with the rendering of either service. These methods should include limiting the inductive influence of the supply circuits or the inductive susceptiveness of the communication circuits or the inductive coupling between circuits or a combination of these, in the most convenient and economical manner."

In other words, there are certain things indicated in connection with the classes of circuits covered in the Principles and Practices above referred to which each utility should do in its system in a general way which will promote inductive coordination.

These measures, however, cannot take account of the problems which arise in specific cases, and this was also recognized in the principles on Duty of Coordination already referred to as follows:

"Where general coordinated methods will be insufficient, such specific coordinated methods suited to the situation should be applied to the systems of either or both kinds as will most conveniently and economically prevent interference, the methods to be based on the knowledge of the art."

These specific methods cannot be embodied in the general design of either plant because their nature and the necessity of their application are contingent upon the conditions of the specific situations which may arise and which generally cannot be foreseen. It is the equitable apportionment of the cost of these latter items which has apparently given rise to such differences of opinion as have existed between representatives of the two industries on this subject.

Taking into account all the foregoing factors, the plan suggested for use in connection with new construction is as follows:

1. Each utility should at its own expense design, construct, operate and maintain its plant in accordance with general coordinated methods.

2. Specific methods of coordination should be paid for by such equitable apportionment of the costs as may be agreed to by the utilities affected. It may be found reasonable in some cases for each party to bear the costs of such specific methods of coordination as result in net capital additions in its own plant; care must be exercised, however, that this be not carried to a point where the best engineering solution is prejudiced. In cases where it is not clear as to what constitutes an equitable apportionment a fifty-fifty division of the costs may be found the most practicable solution.

3. All carrying charges, repair, operating or other current expenses incident to specific coordinated methods and all subsequent replacement costs arising after and due to the installation of specific coordinated methods should be borne by the utility on whose system the costs are incurred.

The above outlined plan has the advantage that it can in no way prejudice the application of the best engineering solution because it makes each party have a direct interest in reducing the

total cost of specific coordinated methods rather than in whether or not the expense is incurred in one plant or the other or both.

In applying this suggested general plan for the allocation of costs of specific methods of coordination, it is assumed the four following conditions will be met:

1. That each system has complied with the requirements for general coordination.
2. That the best engineering solution of the specific problem has been determined.
3. That the costs to be allocated are net costs and, therefore, exclude all items of betterment.
4. That the costs are computed on a uniform and mutually acceptable basis for both direct and indirect charges.

In situations involving extensions to existing systems or the cleaning up of existing exposures it is recognized that such existing systems may not comply entirely with general coordinated methods, and that the method suggested above for new construction may require some modification to adapt it to existing situations. Such problems involve consideration of whether or not both systems should be brought into compliance with general coordinated methods or whether some other plan is the best engineering solution. This point, together with the history of the case and any contemplated plans either party may have for changes in its system, will have a bearing on what constitutes an equitable apportionment of the costs.

PRINCIPLES AND PRACTICES FOR THE JOINT USE OF WOOD POLES BY SUPPLY AND COMMUNICATION COMPANIES

INTRODUCTORY

These Principles and Practices cover the general engineering and operating features involved in the joint use of wood poles and are intended to be in conformity with the broad principles heretofore mutually agreed upon by the Joint General Committee.

The Principles set forth in a broad and general manner the basic fundamentals involved in the intercompany relationships on joint use of poles. The two groups of utilities recognize their responsibility to serve the public safely, adequately and economically. It is therefore essential that any arrangement entered into be such as to best facilitate the present and future rendering of both classes of service.

Practices are recommendations which cover in a more specific way the general ground included in the Principles and are based on an analysis of practical operating experience with joint use of poles. It is recommended that they be used as a guide in the preparation of new agreements for the joint use of poles and in the modification of existing agreements where it is desired by either party to bring such existing agreements into conformity with these Principles and Practices.

PRINCIPLES

1. Duties.

Each party should:

(a) Be the judge of the quality and requirements of its own service, including the character and design of its own facilities.

(b) Provide and maintain facilities adequate to meet the service requirements including such future modifications in these facilities as changing conditions indicate to be necessary and proper.

(c) Determine the character of its own circuits and structures to be placed or continued in joint use, and determine the character of the circuits and structures of others with which it will enter into or continue in joint use.

(d) Cooperate with the other party so that in carrying out the foregoing duties, proper consideration will be given to the mutual problems which may arise and so that the parties can jointly determine the best engineering solution in situations where the facilities of both are involved.

2. Establishing, Maintaining and Terminating Joint Use.

Joint consideration by both parties of safety, service, economy, convenience and the trend toward higher distribution voltages should determine:

(a) When joint use should be employed, taking into account present conditions and those which can be reasonably foreseen, including the possibility of reverting to separate lines.

(b) The best engineering solution for the coordinated arrangement and design of facilities in joint use.

(c) The administrative methods for entering into, carrying on and terminating joint use.

3. Local Contact.

All parties at interest in a locality should maintain close cooperation and each notify the others of any intent to build new lines or to reconstruct existing lines, as an aid to orderly planning and the utilization of joint use where advantageous.

4. Contracts.

General contracts for joint use, if entered into, should define conditions for entering into joint use, for operating in joint use, for terminating joint use and for a practical procedure for modifying facilities in joint use from time to time.

In either general or specific contracts, any provisions treating of the character of circuits on poles for joint use should be so drawn as not to restrict changes in the character of the circuits of either party, except that it should be recognized that such changes may involve the modification or abandonment of joint use in specific cases.

Each specific instance of contemplated initial or modified joint use, whether embracing a single pole, a group of poles or an entire line, should be considered, as to acceptance, as a separate and distinct case, with the right of refusal by either party, and if accepted should be in writing.

Joint use now exists and gives satisfaction in many localities under one of two general plans, one a "Space Rental Plan" and the other a "Joint Ownership Plan." In addition, joint use is sometimes effected on an "Attachment" or "Contact Rental" basis, and sometimes under a "Permanent Rights" agreement, which is a modification of the "Joint Ownership Plan." The Joint Ownership Plan and the Space Rental Plan have in general proved the more simple and convenient working arrangements.

5. Costs.

The allocation of costs between the parties at interest should be prima facia, reasonable and equitable, taking into account all factors involved.

6. Legal Considerations.

Legal questions, including the sufficiency of right-of-way grants held by the parties and the protection of title or property of both parties in the case of mortgages, sales, mergers or consolidations entered into by either party should be given due consideration in the preparation of contracts.

In any terms of the contract dealing with liability for personal or property damage, care should be taken that such terms are not disadvantageous to either party.

7. Periodical Readjustment of Contracts.

Provision should be made for review and revision from time to time of those stipulations of a contract treating of conditions of a varying nature and particularly of items of expense to be apportioned between the parties, such as the cost of poles and rentals which are dependent on material and labor prices.

8. Construction and Inductive Coordination.

The construction and inductive coordination employed in joint use should be in accordance with mutually acceptable practices and in conformity with such recommendations of the Joint General Committee as are issued from time to time.

PRACTICES

1. Territory Covered by Agreement.

Agreements should preferably cover all existing wood poles of each of the parties and any other wood poles hereafter erected or acquired by either of them within a certain described territory, except those which carry circuits of a character that the parties wish to keep out of joint use.

NOTE: It is recognized that there are exceptional situations where it may not be desirable to make general agreements covering a given territory, as, for example, where the major portion of the poles of one of the parties carry circuits for which joint use is not generally advantageous. Such cases may be more satisfactorily handled by agreements covering a specific line or certain specific poles.

2. Types of Joint Use Agreements.

Joint use agreement should preferably be of a type under which each of the parties shares equitably in the cost of joint poles. This may be accomplished in either of the following ways:

(a) Space rental under which form of agreement the licensee rents space on the pole of the Owner and pays a rental per pole which is based on the amount of space reserved. A much used form of this is the so called "flat rental per pole" where the division is practically equal and the rental is approximately equal to one-half the average annual charges on a pole which is stipulated as the standard of reference.

(b) Joint ownership, under which form of agreement each of the parties owns a half interest in each joint pole and pays one-half the cost in place of the pole which is stipulated as the standard of reference.

NOTE: A permanent rights agreement is a modification of the joint ownership agreement which has been used occasionally under which each of the parties retains sole ownership of certain of the poles and the other party purchases a permanent right of occupancy. The other arrangements are the same as in a joint ownership agreement.

Rentals based on individual contacts or attachments are not generally recommended for joint pole agreements, as such a basis involves the expense and obligations arising from periodical inventories of the attachments. It is also difficult to establish rental rates for the many kinds of individual attachments which will continue to be equitable and mutually satisfactory. Furthermore, this basis does not have the advantage of providing a suitable space for the present and future requirements of each party. However, such a basis may sometimes be found satisfactory for an individual agreement where only a small number of poles is involved.

3. Conditions Relating to Joint Use of Poles.

It is recognized that there are very substantial advantages to both utilities in the employment of jointly occupied poles where the conditions and character of circuits permit. The conditions determining the necessity or desirability of joint use depends upon the service requirements to be met by both parties including considerations of safety and economy. Each party is the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

(a) It is recommended that joint use should be entered into in preference to separate pole lines on the same street or highway where the combination of circuits is such as to make further cooperative study of the problem unnecessary and in other cases where a cooperative study shows that joint use is economical and is the best engineering solution.

(b) Each party should retain the right to remain out of joint use with such of its pole lines as are necessary for its own sole use or in other cases where in its judgment the proper rendering of its service now or in the future requires separate lines.

(c) It is recognized that joint use is advisable but that it is necessary that when employed it should meet the service requirements of both parties and that any statement made as to conditions under which joint use is desirable is likely to change as time goes on and as service conditions and the state of the art change.

(d) Based upon the present state of the art, the Supply Utilities and the Communication Utilities have stated as to their respective circuits (See appendices 1 and 2) the present limitations within which each group recommends that joint use be entered into.

(e) In any case where it is necessary that the two kinds of lines occupy the same side of the highway joint use is generally preferable to overbuilding.

(f) It is recognized that situations will sometimes arise in rural districts where greater economy can be obtained with separate lines than with a joint line and without sacrificing safety or service. It is also recognized that a utility will find in some cases that it is necessary to construct a line which is to carry such number and weight of attachments that joint use would not be economical or desirable. In such cases it is not intended to recommend joint use of poles in preference to other arrangements which would be more advantageous.

4. Cooperation to Establish Joint Use.

(a) When any party to a joint use agreement is about to erect a new pole line or to extend or reconstruct an existing pole line within the territory covered by the agreement, notice in advance should be given to the other party to the agreement, such notice showing the proposed location and character of the new poles. The parties should then cooperate to determine whether or not joint use of the poles should be established.

(b) When any party to a joint use agreement desires to occupy space on any existing poles of the other party within the territory covered by the agreement, notice should be given the owner of said poles and the parties should then cooperate to determine whether or not joint use of poles should be established.

5. Avoidance of Conflicting Lines.

Where joint use of poles is not to be established or where in accordance with Section 6 of these Practices joint use is to be terminated, the parties should make every reasonable effort to avoid the establishment of conflicting lines.

6. Procedure When Character of Circuits Is Changed.

When either party desires to change the character of its circuits on jointly used poles it shall so notify the other party and the parties shall cooperate to determine whether or not joint use of the poles involved shall be continued. If it is not agreed to continue joint use of the said poles, the parties shall then cooperate to determine the most practical and economical method of effectively providing for separate lines. The party whose circuits are to be moved shall promptly carry out the necessary work and the parties shall cooperate to determine the equitable apportionment of the net expense involved in such relocation. In the event of a disagreement as to what constitutes an equitable apportionment of such expense the following arrangements are recommended:

(a) In the case of a space rental agreement, the licensee shall bear the said net expense.

(b) In the case of a joint ownership agreement the said net expense shall be divided equally between the parties.

Unless otherwise agreed by the parties, ownership of any new line constructed under the foregoing provision in a new location shall rest in the party for whose use it is constructed. The net cost of establishing service in the new location should be exclusive of any increased cost due to the substitution for the existing facilities of other facilities of a substantially new or improved type or of increased capacity, but should include the new pole line, the cost of removing attachments from the old poles to the new location and the cost of placing the attachments on the poles in the new location.

7. Ownership of Poles Under a Space Rental Agreement.

In any case where the parties to a space rental agreement shall conclude arrangements for the joint use of any new poles to be erected, the ownership of such new poles should be determined by mutual agreement. In case of failure to agree, the party then owning the smaller number of joint poles under the agreement should erect the poles and be the owner thereof.

NOTE: It has been found to be of advantage under this form of agreement to have each party own approximately one-half the total number of jointly used poles, as this tends to equalize the investment of the two parties. Furthermore, this has the advantage of reducing the intercompany billing and the exchange of money between the parties. This division of ownership should preferably be accomplished by each party owning certain continuous lines rather than having the ownership of the poles in a given line divided.

8. Joint Fundamental Plan.

An effective way of handling the proper development of joint pole lines in a given territory is through the full application of the principles on cooperation including advance notice, advance planning and the interchange of information. Experience has shown that this can be accomplished through a joint fundamental plan of the present and future developments of the overhead systems of the respective parties. Through such joint planning it will be generally found possible to avoid any difficult situations in locating the lines and the application of these Principles and Practices to both the present and future developments can be carried out in the most effective and economical manner.

9. Specifications for Joint Pole Construction.

It is intended that complete specifications covering recommended practices for joint use of poles under various conditions will be prepared as soon as practicable. Until such time as these specifications are issued, it is recommended that the National Electrical Safety Code be used as a guide to practice.

Existing joint pole construction should be brought into conformity with the recommended practices in an orderly and systematic manner. This may be accomplished by a provision in the agreement that a certain percentage of the existing construction be brought into conformity with the recommended practices each year.

10. Inductive Coordination for Circuits on Jointly Used Poles.

The "Principles and Practices for the Inductive Coordination of Supply and Communication Systems" as issued from time to time by the Joint General Committee should be followed.

APPENDIX 1

Supply Utilities Statement.

In the present state of the art and subject to the limitations of the Principles and Practices of which this is an appendix, the Supply Utilities are willing to enter into joint use of poles generally, irrespective of the character of the Communication Utilities circuits with the clear understanding that these Principles and Practices do not limit such changes to higher voltages as may be desirable in the future as the most advantageous means of serving their customers but provide for such changes in location or construction as may be necessary to meet the changed conditions.

Exhibit D

From: Lindsay, Steven R (STEVE) [mailto:steve.lindsay@verizon.com]
Sent: Wednesday, May 30, 2012 11:51 AM
To: Kennedy, T J
Cc: Slavin, James; Wasmundt, Samuel (Sam)
Subject: RE: New Pole Attachment Agreement

Hello Tom,

Let me check with our pole team and get back to you.

Steve Lindsay
Staff Consultant
Centralized Joint Use
352-503-5017

From: Kennedy, T J [mailto:T.J.Kennedy@fpl.com]
Sent: Wednesday, May 30, 2012 11:49 AM
To: Lindsay, Steven R (STEVE)
Cc: Slavin, James; Wasmundt, Samuel (Sam)
Subject: New Pole Attachment Agreement

Steve,

It has been a while since I heard from you and the termination date for new attachments on the existing joint use agreement is fast approaching. I was wondering if Verizon would like to begin discussions for a new (perhaps interim) pole attachment agreement with FPL?

Tom

Thomas J. Kennedy, P.E.
Principal Regulatory Affairs Analyst
Florida Power and Light Company
DRS/AOB
7200 NW 4th ST
Plantation, FL 33317-2211
Office: 954-321-2241
FAX: 954-321-2135

From: Lindsay, Steven R (Steven) [mailto:steve.lindsay@verizon.com]
Sent: Thursday, February 16, 2012 12:38 PM
To: Kennedy, T J; Bromley, Dave
Cc: Slavin, James
Subject: Termination Date

Tom,

In response to your request, Verizon acknowledges June 9, 2012 as the termination date of our joint use agreement.

Steve Lindsay
Staff Consultant
Centralized Joint Use
352-503-5017

Exhibit E

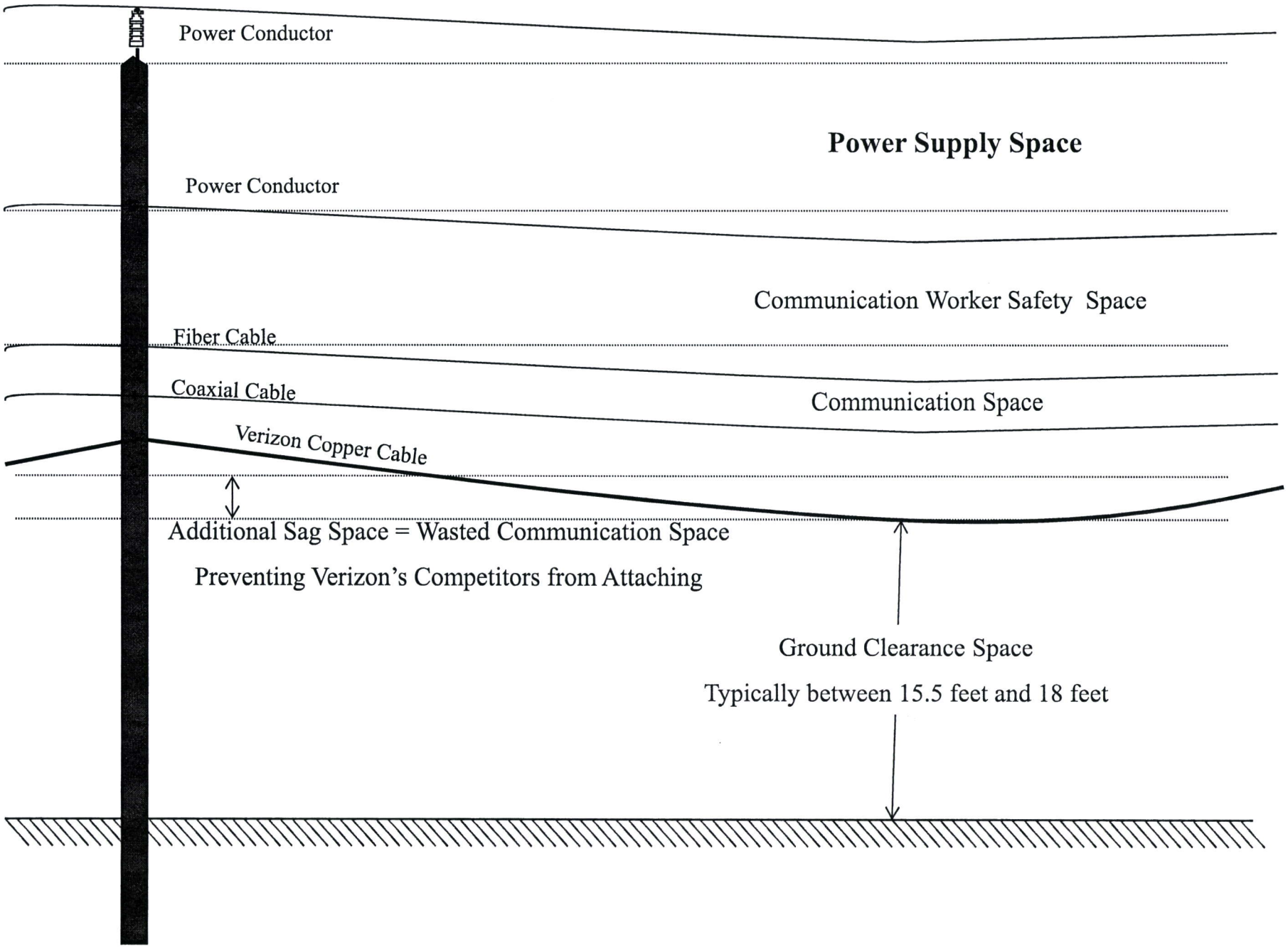
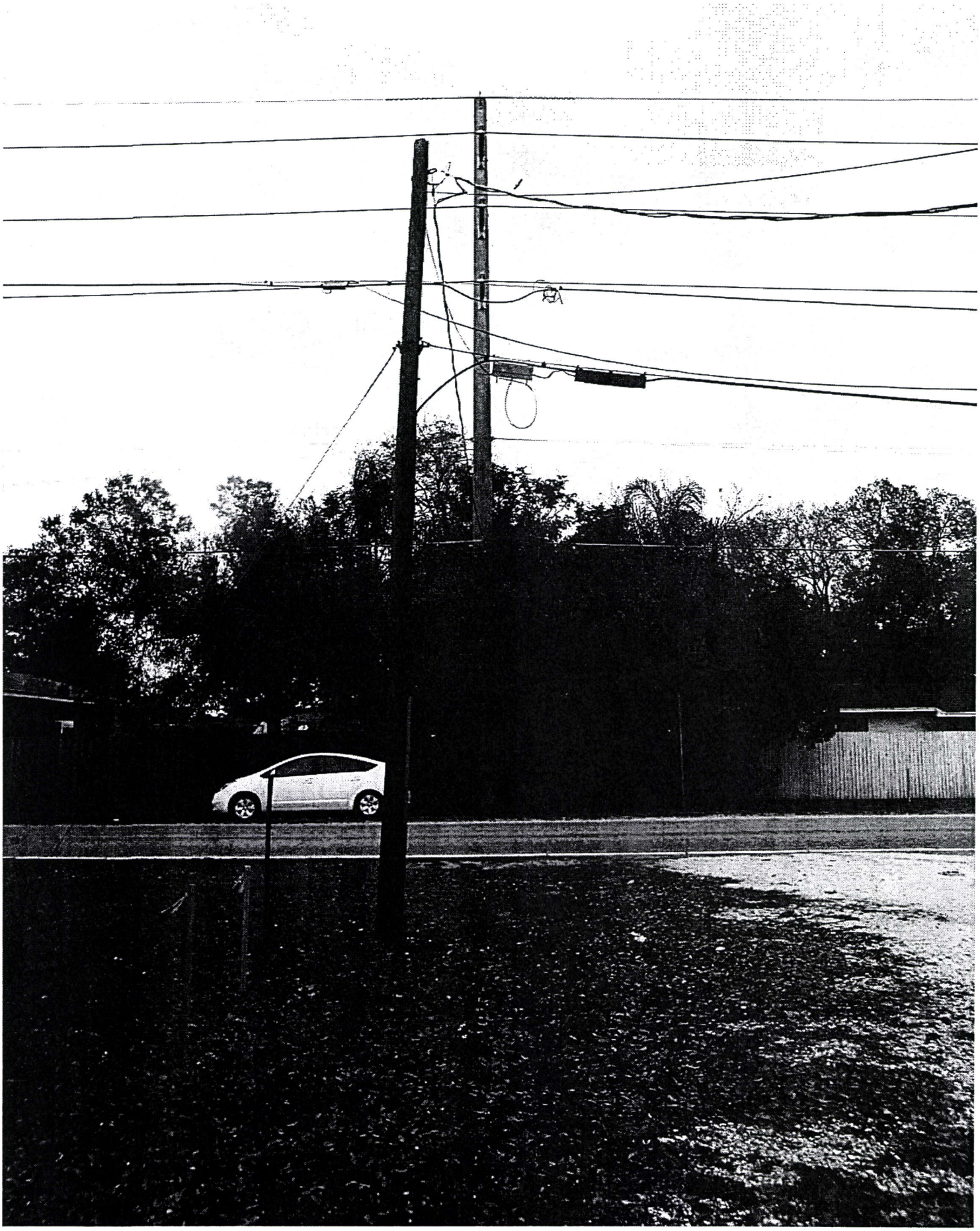

Power Conductor
Power Supply Space
Power Conductor
Communication Worker Safety Space
Fiber Cable
Coaxial Cable
Communication Space
Verizon Copper Cable
Additional Sag Space = Wasted Communication Space
Preventing Verizon's Competitors from Attaching
Ground Clearance Space
Typically between 15.5 feet and 18 feet

Exhibit F



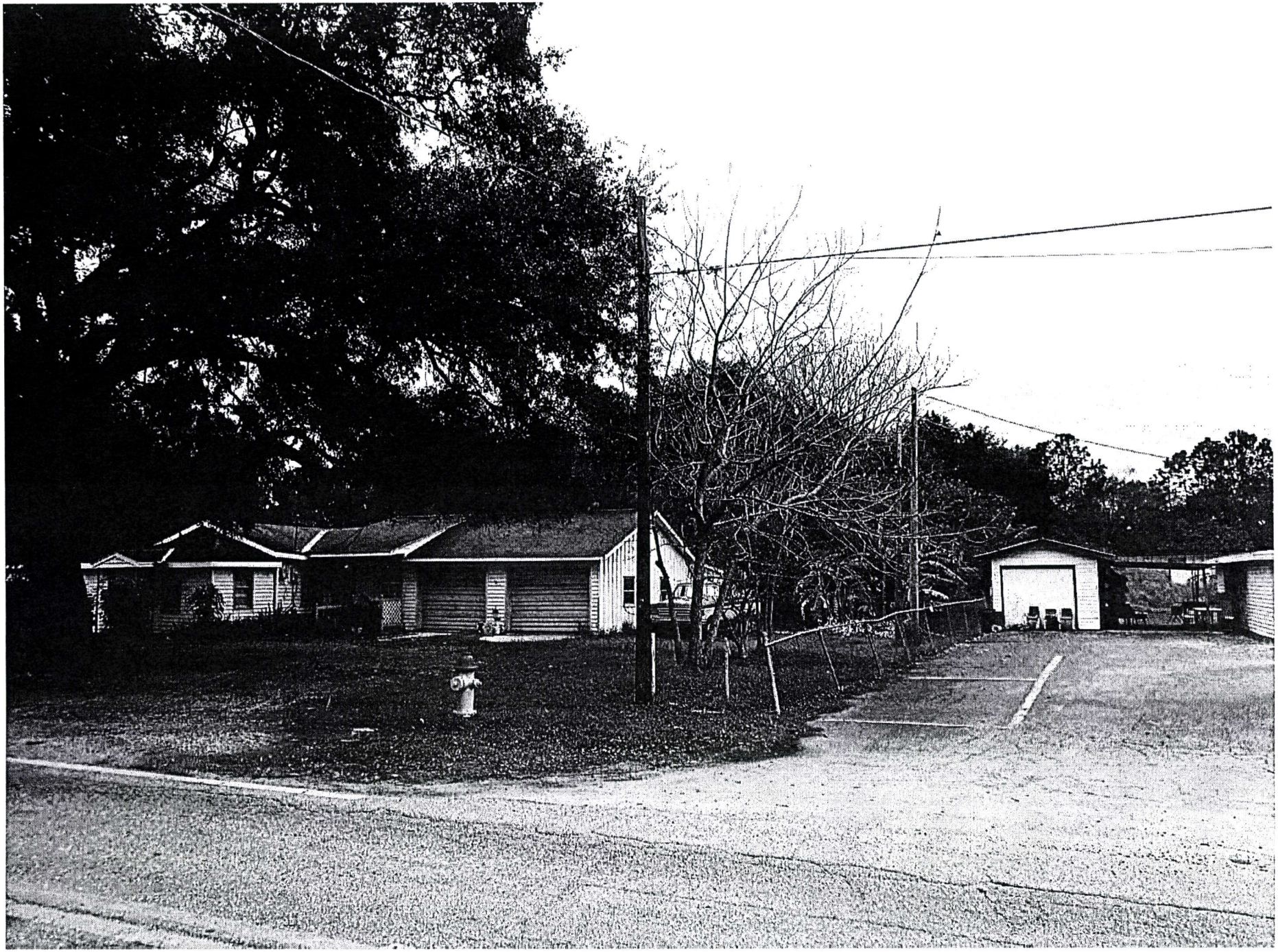


Exhibit G

Kennedy, T J

From: Lindsay, Steven R (Steve) <steve.lindsay@verizon.com>
Sent: Monday, September 26, 2011 1:46 PM
To: Kennedy, T J; Wasmundt, Samuel (Sam)
Cc: Walker, Sanford C (Sanford)
Subject: RE: Minutes from the JUA meeting in Tampa (FP&L/Verizon) September 22nd 2011 (1st meeting)

I have a correction or clarification to make to Sam's notes:

"Steve said that if all the departments within Verizon agreed then he would get back to Tom on this issue. ***Verizon would continue to be a "Joint User" for existing facilities".***

Verizon would ***only*** desire to remain a "joint user" on its existing attachments if provided a CATV type rate. Verizon would give up its "joint user" status both on its existing facilities and future attachments to obtain a fair and reasonable rate its competitors enjoy.

I also agree with Tom on a conference call to discuss the next step in our negotiations rather than flying back and forth. Once we come up with a list of the benefits of joint use compared to a reciprocal licensee relationship we can discuss our next steps.

We will be willing to travel over to Plantation at any time since you were nice enough to come over our way

Sam, why don't you set up a conference call for October 4th sometime in the a.m..

Steve Lindsay
Section Manager
Centralized Joint Use
813-664-6047

From: Kennedy, T J [mailto:T.J.Kennedy@fpl.com]
Sent: Friday, September 23, 2011 11:48 AM
To: Wasmundt, Samuel (Sam); Lindsay, Steven R (Steve)
Cc: Walker, Sanford C (Sanford)
Subject: RE: Minutes from the JUA meeting in Tampa (FP&L/Verizon) September 22nd 2011 (1st meeting)

Sam,

Thank you very much for taking minutes. I would suggest the modifications I made to your email below.

For information:
The numbers don't add up in the net cost of a bare pole, because we were using them relatively (along with information you already know), however the number (55%) I did give you is accurate. Also a note to my strikethrough below regarding the space used by Verizon. I have no data to dispute what Verizon uses. If I showed disagreement it wasn't to the calculation or Verizon's contention, it would have been more to using space as the primary method of reimbursement for joint use. This doesn't need to be in the minutes. Additionally regarding future meetings, if what is to be discussed can be done in an hour or less, I don't see why we couldn't conduct those meetings by phone.

Tom

Thomas J. Kennedy, P.E.
Principal Regulatory Affairs Analyst

Florida Power and Light Company
DRS/AOB
7200 NW 4th ST
Plantation, FL 33317-2211
Office: 954-321-2241
FAX: 954-321-2135

From: Wasmundt, Samuel (Sam) [mailto:sam.wasmundt@verizon.com]
Sent: Friday, September 23, 2011 9:57 AM
To: Kennedy, T J; Lindsay, Steven R (Steve)
Cc: Walker, Sanford C (Sanford)
Subject: Minutes from the JUA meeting in Tampa (FP&L/Verizon) September 22nd 2011 (1st meeting)

All,

Below are the meeting minutes. Please let me know if you need any changes or additions. Next meeting is scheduled for October 4th in Plantation.

Location: Tampa
Meeting began at 1PM and ended at 4PM
Present: Sanford Walker, George Murray, Steve Lindsay, Tom Kennedy, Sam Wasmundt

*NOTE: Some of these subjects were discussed more than once throughout the length of the meeting.

--Introductions
--Tom passed out a "Joint Use Contact Information" sheet and explained the roles of the FP&L employees.
--Steve touched on the individuals that would be involved for Verizon
--Tom brought up the District of Columbia (FCC litigation) proceedings that are currently being conducted.
>Tom said that depending on how the courts rule (for or against the FCC), it would definitely affect the ILEC rate.
>Because of the resources involved in a negotiation of this magnitude, Tom asked Steve if they should wait until this ruling has been decided to avoid going through this negotiation twice. Steve gave the impression that he would like to continue with these negotiations.
--Tom and Steve discussed the current pole rental rate that both companies are charging each other for attachments. ($33).
>Steve said that he wants a fair and reasonable rate per the FCC ruling 11-50 because Verizon is a competitor now and not a monopoly like they were in 1975 when the current JUA was created. *FP&L charges CATV $11. Verizon is no longer regulated by the Public Service Commission and is also no longer "the communication provider of last resort." George stated that Verizon is no longer a "carrier of last resort" and referred to a July ruling at the FPSC. Verizon can now pick and choose their customers.
>Tom said that FPL's calculation for Verizon's ~~rate is determined by~~ net cost of a bare pole is 55% of the net cost of a bare pole calculated by using the FCC's method ~~cost~~ ($140 vs. $66), the rate is then 50% of $66 = $33 and also stated that it is based on the costs of 35 and 40 foot wood poles as opposed to the general population of poles.

--Tom discussed that the timeline for getting an agreement approved by FP&L will take several months (6-12 months), due to several departments as well as the President needing to review and sign-off. The initial time-line that Steve put together is unrealistic.
--Steve discussed that Verizon only occupies about 1.5 feet of usable space on a pole and not 4 feet as the rate suggests. ~~Tom disagreed with this figure of 1.5 feet.~~
--Tom discussed that maybe Verizon going forward should now posture themselves as a "Licensee" for the new placement of aerial facilities. Steve was in agreement and said that Verizon is really not placing new facilities on FP&L poles anymore so he would check with Verizon Construction and Operations for approval though. Steve said that if all the departments within Verizon agreed then he would get back to Tom on this issue. Verizon would continue to be a "Joint User" for existing facilities.
--Tom discussed FP&L's "Pole Hardening" program. It was discussed between Steve and Tom that FP&L would request that Verizon replace a pole, but Verizon would instead inform FP&L to replace the pole and then invoice Verizon. Steve wanted to clarify this procedure in the new JUA.
--Tom and Steve discussed future times and meeting locations for this negotiation. Preliminarily the following has been approved if enough legwork can be completed between meetings. Meeting times will be determined by the traveling party.

>October 4th – Plantation – 1PM to 4PM.
>October 18th – Tampa – 1PM to 4PM
>November 1st – Plantation – 1PM to 4PM
>Future meeting and times TBD

--Tom and Steve discussed "stepping" down the current rate of $33 to $17 over a few years. Nothing serious was decided on this discussion.
--Steve asked Tom how FP&L came up with the pole attachment rental rate for Transmission poles. Tom said it is calculated by taking the Distribution pole rate and multiplying it by 4 because the net bare pole cost for Transmission poles is a lot more (concrete vs. wood).
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>Steve said there would be more concise audits (surveys), Verizon would reciprocate and reduce the rate it charges FP&L for pole attachments to it's poles. Relationship between the two companies would continue. etc. Tom and Steve said that both sides would continue to come up with a list of more benefits. Tom is concerned that the FP&L President is going to require a significant and legitimate list of benefits in order for him to seriously consider the proposal.
--Tom discussed that it might be possible for FP&L to offer Verizon a new reduced pole rate, but keep the current JUA with additional amendments. Steve said he would consider that offer.
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--Tom discussed that he prefers the language of the existing agreement over the proposed agreement.
>Tom says the language is more clear.

Meeting adjourned at 4:05PM
Next meeting: Plantation Florida – October 4th – 1 to 4PM.

Regards,

Sam Wasmundt
Joint Use Pole Administrator
Verizon Florida LLC

1909 Us Hwy. 301 N.
MC FLG2-750
Bldg. D 2nd Floor
Tampa, FL 33619
sam.wasmundt@verizon.com
813-627-8358

"Life is what happens to you while you're busy making other plans" - John Lennon

Kennedy, T J

From: Kennedy, T J
Sent: Wednesday, October 05, 2011 3:49 PM
To: Wasmundt, Samuel (Sam); Lindsay, Steven R (Steve)
Cc: Walker, Sanford C (Sanford)
Subject: RE: Remaining TJK Deliverables for 10/4/11 Meeting (FP&L and Verizon)

Thank you for the minutes Sam,

I like to keep minutes as they are heard, but thought it might be a good idea to clarify certain items below.

Tom

Thomas J. Kennedy, P.E.
Principal Regulatory Affairs Analyst

Florida Power and Light Company
DRS/AOB
7200 NW 4th ST
Plantation, FL 33317-2211
Office: 954-321-2241
FAX: 954-321-2135

From: Wasmundt, Samuel (Sam) [mailto:sam.wasmundt@verizon.com]
Sent: Tuesday, October 04, 2011 3:29 PM
To: Kennedy, T J; Lindsay, Steven R (Steve)
Cc: Walker, Sanford C (Sanford)
Subject: RE: Remaining TJK Deliverables for 10/4/11 Meeting (FP&L and Verizon)

Tom/Steve,

Below are the minutes from today's meeting.

Meeting began via conference call at 9am
*All of these notes correspond to the items on the agenda below in Tom's e-mail to Steve on Sept. 30th.
>Tom and Steve mainly discussed the differences between a Joint Use Agreement and a Licensee Agreement.
>Tom brought up some points about 3rd party attachers regulated by the FCC (compared to ILEC Joint Pole Users).
-on a pole change-out - poles installed by FP&L would typically be no taller than 45'
-Access to FP&L's poles are not guaranteed
*Tom discussed how FP&L was currently not allowing Cellular antennae's to be placed on top of their poles.
>Capacity Expansion

Tom stated that the FCC has jurisdiction over the ILEC's rates, terms, and conditions, but not access.

>Tom stated that overlashing would either be not be allowed or become a negotiated item on their poles if Verizon were to become a licensee.

>Sign and sue

>FCC's Type Service Jurisdiction

-Tom stated that the FCC does not have jurisdiction over ~~this~~rates terms and conditions of broadband access.

>Tom stated that the FCC does not regulate broadband service under the pole attachment act.

>Make Ready

-Tom pointed out that if Verizon becomes a licensee then CATV might be slow to relocate their facilities if at all, to accommodate Verizon. This activity would not be regulated by the FCC.

>Pole line design

-Standard Joint Use Poles are 35' or 40' tall to accommodate Verizon.

-Verizon only pays about a quarter of the net cost of a bare ~~to maintain a~~ FP&L owned pole per ~~year~~ the FCC formula.

-Verizon if they become a licensee would have to pay the difference to upgrade the FP&L pole.

>Concrete Poles verse wood poles

-Concrete poles are three to ten times more expensive than wood poles. FPL only requires Concrete poles at ~~are usually only~~ the first pole out of a substation and at large switchgear locations.

-Tom stated that FP&L makes concessions to Verizon because of the JUA that are not normally extended to 3rd party attachers.

>Make Ready Costs

-Tom stated that this is almost two times higher for a Licensee that a Joint Pole User.

>Attachment Rate

-As a Licensee Verizon would only be ~~allowed~~ charged 1' of usable space for each foot of space used on the FP&L pole. A survey would also be mandatory and Verizon would be responsible for the cost.

-Pole attachment fees would need to be paid ahead of time instead of in the arrears as is done today. *The first year Verizon would get two invoices at the same time.

-Verizon would need to budget for received two invoices at the same time in the same year.

-Tom stated that FP&L would need to charge Verizon one-time "mitigation" fee per pole. This fee would cover FP&L's cost per pole to accommodate Verizon over a 20 – 30 year period if Verizon had been a Joint Pole User.

-Each FP&L pole that Verizon occupies or is wanting to attach to would have to be appraised for this "mitigation" fee.

-Tom stated that Verizon, according to the FCC, should have been invoicing the 3rd party attacher/s on the FP&L pole, a fee to recover the difference that Verizon had to pay FP&L for "make ready" charges.

-Simple vs. Complete or complex "Make ready" charges.

-Tom said that FP&L would expect Verizon to mitigate this difference on existing poles.

-Transmission poles

-Verizon as a Licensee would not be allowed to attach to Transmission poles (negotiable).

-Risers

-FP&L would charge Verizon by the foot to install risers if Verizon was a Licensee instead of a Joint Pole User.

>Other Joint Use benefits

-As a Licensee, Verizon would not be able to take over ownership of the poles they already occupy if FP&L decides to abandon.

-AS a Licensee, Verizon would be charged more for the pole audit then they are today. Verizon would be charged the same rate as the 3rd party attachers are charged, plus Verizon could be penalized up to five years back rent for any unauthorized attachments.

-FP&L currently lets Verizon enjoy it's own space on the pole and the convenience of being on the bottom. If Verizon becomes a Licensee, this could change i.e., FP&L might let a 3rd party attacher place it's facilities on the bottom or directly above Verizon.

>Bonds, Indemnity and Insurance Requirements

-As a Licensee Verizon would be required to provide a bond, possibly worth three million dollars, or a Letter of Credit in order to attach to FP&L's poles.

Meeting adjourned 11:20am

Next meeting. October 18th 9am conference call
1-866-818-0651 PC 904-6432#

Regards,

Sam Wasmundt
Joint Use Pole Administrator
Verizon Florida LLC
1909 Us Hwy. 301 N.
MC FLG2-750
Bldg. D 2nd Floor
Tampa, FL 33619
sam.wasmundt@verizon.com
813-627-8358

From: Kennedy, T J [mailto:T.J.Kennedy@fpl.com]
Sent: Friday, September 30, 2011 11:38 AM
To: Lindsay, Steven R (Steve)
Cc: Wasmundt, Samuel (Sam); Walker, Sanford C (Sanford)
Subject: RE: Remaining TJK Deliverables for 10/4/11 Meeting

Steve,

The information below should fulfill my action items from our meeting on September 22, 2011. You agreed to look this over and include any additional benefits I missed, then we will discuss during our meeting on October 4th, 2011.

Non-comparable Benefits/Advantages of Joint Use

A. Access

a) Telecommunications carriers and CATV companies ("Third Parties" or "Third Party") are granted mandatory access to poles with capacity available. Joint users are granted access by agreement and have all the rights granted to them by the agreement including increasing capacity. Verizon as an ILEC is not guaranteed access or the increase of capacity to new poles or existing poles.

Access Issues

- Capacity Expansion
- Overlashing
- Sign & Sue
- FCC's Type Service Jurisdiction

b) Currently make-readies are guided by the joint use agreement. Attachments and communication space make-ready for Third Party attachers are guided by the FCC's timeline (47 CFR 1.1420).

c) Notification of pole work for Verizon is currently guided by the joint use agreement. If a Third Party requires pole work on an FPL pole, FPL must give all attachers 60 days notice or at least enough time so all attachers can comply with 47 CFR 1.1420.

B. Pole Line Design

a) Under the joint use agreement, new and replacement pole lines are designed to accommodate joint use of both parties without additional make-ready charges under normal circumstances. Third Parties must attach to existing pole lines, which are not designed to accommodate their facilities, if capacity is available.

b) In order to accommodate Verizon, FPL joint use poles are set a minimum 60" taller and two classes stronger than FPL needs in order to accommodate the 40" communication worker safety space and space for Verizon to attach, a premium not afforded to Third Parties.

C. Attachment Rate

a) Joint Use Rate is based on the cost of shared pole ownership and there is no additional fee if more space is required and available. Attachment rate for a Third Party entitles attacher to one foot of space on the pole.

b) The joint use formula basis for the net cost of a bare pole is 55% of the cost that the FCC formula allows for (based on 2010 numbers) and only includes the cost of 35 and 40 foot wood poles in the formula. It doesn't include maintenance, engineering and supervision costs. It was intended to be an offset to encourage pole ownership, not an exact cost of owning a pole.

c) Under joint use rate calculation the cost of concrete poles charged based on special poles used at 1.5 times the wood pole rate and additional charges for concrete poles are limited to special circumstances, which Verizon has eliminated virtually all locations. However concrete poles are included in the net cost of poles under the FCC formula. Except for some limited situations (e.g., poles with certain types of switch gear & certain riser locations), FPL does not need concrete poles to meet its own design needs, which includes extreme windloading design.

d) Under the existing joint use agreement, existing poles and new poles are treated as joint use poles. Third Parties are only granted access based on space being available or certain make-ready situations.

e) Under the joint use agreement, the rate to attach to a transmission pole is four times the rate to attach to a distribution pole. Under the license agreement, the rate to attach to a transmission pole is based on the net cost of a transmission pole, which is more than 50 times the net cost of a distribution pole for joint use.

f) Under the joint use agreement Verizon is allowed to install risers on a joint use pole without cost.

D. Other Joint Use Benefits

a) If FPL abandons a pole, Verizon has the right to take ownership of the old pole under the joint use agreement. If FPL removes its attachment from a pole, Third Parties must also remove their facilities so FPL can remove the pole.

b) Under the joint use agreement the lightning arrestors are installed by FPL, no additional cost is passed on to the second party. Use of the bond wire by Third Parties for a common bond with lightning protection is negotiated.

c) Joint Users share the cost of easement and right-of-way acquisitions. The pole owner attempts to obtain suitable rights-of-way or easements for both parties – no charge. With Third Party license agreement, the licensee is required to obtain their own easements and permits.

d) Verizon's special needs are communicated to FPL before a pole is installed or when Verizon is making modifications to existing poles. Verizon's design needs are included into the construction of the pole line. This communication takes place between the engineers of both companies and occurs at no charge to Verizon. Third Parties are not afforded this service.

e) With joint use, Verizon and FPL employees discuss what is in the best interest of joint use. Third Parties must accept non-discriminatory treatment provided to all.

f) Under the joint use agreement, reserved space for both companies is guided by the joint use agreement.

g) The joint use agreement allows for attachments to transmission poles.

h) Under the current joint use agreement, Verizon is allowed to make attachments to joint use poles without a permit. Attachments are forecasted and projected then adjusted during five year surveys without penalties for unauthorized attachments. FPL allows Verizon to specify the number of attachments if they feel their count is more accurate than the forecast.

i) Currently when designing a pole line, Verizon advises the FPL engineer during the design stages that Verizon will be attaching to the new pole line. The pole line is designed and constructed to accommodate Verizon's attachments.

j) Joint user's initial load is designed into a new pole line. Additional load (attachments) after initial construction can be accommodated through discussion with FPL engineer.

k) The joint use agreement allows FPL to install taller poles (e.g. crossing highways and waterways) for either company if it is beneficial for joint use.

l) Under the joint use agreement, Verizon can place some equipment on the pole in addition to their wireline attachment if needed, as long as the pole can handle the load.

m) Currently Verizon is granted the lowest and most convenient position on the pole.

E. Bonds, Indemnity & Insurance Requirements

a) The existing joint use agreement requires no performance bond or letter of credit.

b) Under the current joint use agreement, liability is based on responsibility.

c) The current joint use agreement only discusses responsibility associated with liability and damages.

Regarding your request below for a copy of FPL's Pole Attachment License Agreement, FPL does not have a form Wireline Pole Attachment Agreement that is current. With your request, I have asked our law department to take our last executed Wireline Pole Attachment Agreement and bring it current with the new FCC regulations. I will advise you when it is complete.

Very Truly Yours,
Tom

Thomas J. Kennedy, P.E.
Principal Regulatory Affairs Analyst

Florida Power and Light Company
DRS/AOB
7200 NW 4th ST
Plantation, FL 33317-2211
Office: 954-321-2241
FAX: 954-321-2135

From: Lindsay, Steven R (Steve) [mailto:steve.lindsay@verizon.com]
Sent: Thursday, September 29, 2011 10:35 AM
To: Kennedy, T J
Subject: RE: Permit Application Manual Part #3

Tom,

Thanks for the permitting documents. Per our conversation last week would you please provide a copy of your Pole Attachment License Agreement.

Thanks.

Steve Lindsay
Section Manager
Centralized Joint Use
813-664-6047

From: Kennedy, T J [mailto:T.J.Kennedy@fpl.com]
Sent: Wednesday, September 28, 2011 2:42 PM
To: Wasmundt, Samuel (Sam); Lindsay, Steven R (Steve)
Cc: Walker, Sanford C (Sanford)
Subject: RE: Permit Application Manual Part #3

Part 3 is attached.

Thomas J. Kennedy, P.E.
Principal Regulatory Affairs Analyst

Florida Power and Light Company
DRS/AOB
7200 NW 4th ST
Plantation, FL 33317-2211
Office: 954-321-2241
FAX: 954-321-2135

From: Kennedy, T J
Sent: Wednesday, September 28, 2011 2:41 PM
To: 'Wasmundt, Samuel (Sam)'; 'Lindsay, Steven R (Steve)'
Cc: 'Walker, Sanford C (Sanford)'
Subject: RE: Permit Application Manual Part #2

Part 2 is attached.

Thomas J. Kennedy, P.E.
Principal Regulatory Affairs Analyst

Florida Power and Light Company
DRS/AOB
7200 NW 4th ST
Plantation, FL 33317-2211
Office: 954-321-2241
FAX: 954-321-2135

From: Kennedy, T J
Sent: Wednesday, September 28, 2011 2:40 PM
To: 'Wasmundt, Samuel (Sam)'; Lindsay, Steven R (Steve)
Cc: Walker, Sanford C (Sanford)
Subject: RE: Permit Application Manual

Thank you Sam for the call-in information. I have scheduled this meeting for one hour on my calendar.

Over the course of these discussions I will be referring to FPL's permit application process for third parties. The file that makes up the process manual is divided into three parts to email because of its size. Therefore I am going to send you three emails, one with each part, so you have possession of this manual. Please let me know if you don't receive all three files.

Permit Application Process Manual Part #1 attached to this email.

At times I will also be referring to FPL's Electric Infrastructure Storm Hardening Plan. Those standards can be downloaded from the FPSC website at: http://www.psc.state.fl.us/library/filings/10/03687-10/03687-10.pdf

You can also find permit applications, contact information and permit process flow charts on the Permit Application Vendor's website.

Regards,
Tom

Thomas J. Kennedy, P.E.
Principal Regulatory Affairs Analyst

Florida Power and Light Company
DRS/AOB
7200 NW 4th ST
Plantation, FL 33317-2211
Office: 954-321-2241
FAX: 954-321-2135

From: Wasmundt, Samuel (Sam) [mailto:sam.wasmundt@verizon.com]
Sent: Tuesday, September 27, 2011 8:27 AM
To: Lindsay, Steven R (Steve); Kennedy, T J
Cc: Walker, Sanford C (Sanford)
Subject: RE: Minutes from the JUA meeting in Tampa (FP&L/Verizon) September 22nd 2011 (1st meeting)

All,

Fyi-

I have set up a call for 9am October 4th

1-866-818-0651 Passcode 9046432#

Regards,

Sam Wasmundt
Joint Use Pole Administrator
Verizon Florida LLC
1909 Us Hwy. 301 N.
MC FLG2-750
Bldg. D 2nd Floor
Tampa, FL 33619
sam.wasmundt@verizon.com
813-627-8358

"Life is what happens to you while you're busy making other plans" - John Lennon

---

From: Lindsay, Steven R (Steve)
Sent: Monday, September 26, 2011 1:46 PM
To: 'Kennedy, T J'; Wasmundt, Samuel (Sam)
Cc: Walker, Sanford C (Sanford)
Subject: RE: Minutes from the JUA meeting in Tampa (FP&L/Verizon) September 22nd 2011 (1st meeting)

I have a correction or clarification to make to Sam's notes:

"Steve said that if all the departments within Verizon agreed then he would get back to Tom on this issue. ***Verizon would continue to be a "Joint User" for existing facilities".***

Verizon would ***only*** desire to remain a "joint user" on its existing attachments if provided a CATV type rate. Verizon would give up its "joint user" status both on its existing facilities and future attachments to obtain a fair and reasonable rate its competitors enjoy.

I also agree with Tom on a conference call to discuss the next step in our negotiations rather than flying back and forth. Once we come up with a list of the benefits of joint use compared to a reciprocal licensee relationship we can discuss our next steps.

We will be willing to travel over to Plantation at any time since you were nice enough to come over our way

Sam, why don't you set up a conference call for October 4th sometime in the a.m..

Steve Lindsay
Section Manager
Centralized Joint Use
813-664-6047

From: Kennedy, T J [mailto:T.J.Kennedy@fpl.com]
Sent: Friday, September 23, 2011 11:48 AM
To: Wasmundt, Samuel (Sam); Lindsay, Steven R (Steve)
Cc: Walker, Sanford C (Sanford)
Subject: RE: Minutes from the JUA meeting in Tampa (FP&L/Verizon) September 22nd 2011 (1st meeting)

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Principal Regulatory Affairs Analyst

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Present: Sanford Walker, George Murray, Steve Lindsay, Tom Kennedy, Sam Wasmundt

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--Tom discussed that he prefers the language of the existing agreement over the proposed agreement.
>Tom says the language is more clear.

Meeting adjourned at 4:05PM
Next meeting: Plantation Florida – October 4th – 1 to 4PM.

Regards,

Sam Wasmundt
Joint Use Pole Administrator
Verizon Florida LLC

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MC FLG2-750
Bldg. D 2nd Floor
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813-627-8358

"Life is what happens to you while you're busy making other plans" - John Lennon

Kennedy, T J

From: Wasmundt, Samuel (Sam) <sam.wasmundt@verizon.com>
Sent: Tuesday, October 18, 2011 10:11 AM
To: Lindsay, Steven R (Steve); Kennedy, T J
Cc: Walker, Sanford C (Sanford)
Subject: RE: Minutes from this morning's call between FP&L and Verizon

All,

Below are the minutes to this morning's meeting between Steve Lindsay (Verizon) and Tom Kennedy (FP&L).
*Minutes submitted by Sam Wasmundt (Verizon).

Subjects:
>License agreement – Tom will be out of the office next week, but is asking his folks to get him an answer by Nov. 1st. License agreements are typically shorter than the existing J.U. agreement. Steve mentioned to Tom that he has done National License agreements in other areas.

-Tom said that FP&L would like to keep jurisdiction under the existing contract.

-Steve asked Tom if anything has changed with Licensing agreements. Tom says that he is not opposed to Steve submitting a reciprocal license agreement. Tom said that FP&L will make every attempt to stay within the existing J.U. agreement. Tom said that FP&L might set their own poles if Verizon cancels the J.U. agreement. FP&L would not get into a "range war" though, they would share and cooperate with placing their own poles in the right of way instead of attaching to Verizon poles. FP&L according to Tom would, would probably not want a reciprocal license agreement, they want a J.U. agreement. Steve said that Verizon really does not build new leads, the new infrastructure is pretty much underground now-a-days. Tom wants to use legacy under the existing J.U. agreement. Tom wants Steve to make a proposal after FP&L reviews the license agreement.

>Mitigation – Historical value of FP&L's poles. Tom said that FP&L does not have an answer for the value of mitigation fees at this time.

-Tom said that FP&L has an investment right now (accommodate Verizon aerial facilities through the years). Tom said that FP&L's purpose (mitigation fee) is not to produce a profit for FP&L, but to be fair to their customers. Tom said that FP&L placed taller poles to accommodate Verizon when they really could of just placed a shorter pole, so FP&L would need Verizon to compensate FP&L for that extra length (e.g. 5 feet-30' vs. 35' pole). Tom wants Steve to make a proposal to FP&L that would address this issue. Tom said that this issue is very complicated and will be tricky to get right. Tom said that Steve's proposal needs to include addressing mitigation issue (how Verizon will compensate FP&L for the extra taller

poles FP&L placed for Verizon). Steve said that Verizon would want to address depreciation of poles.

-Tom said that Verizon has not offered FP&L anything of substance that would motivate them to cancel the existing J.U. agreement. Steve said that it looks like Verizon would need to offer FP&L some type of mitigation settlement in order for FP&L to abandon the current J.U. agreement and go with just a licensing fee with Verizon.

-Steve asked Tom if he thinks that Verizon should offer an official, written proposal rather than go forward with scheduling an executive level meeting. Tom replied that if Verizon decides to make an official proposal to FP&L then that would send a better message to FP&L rather than scheduling an executive level meeting and making it sound like a threat that might be taken by FP&L that Verizon is interested in eventually making a formal complaint to the FCC. Tom said that Verizon should offer this official proposal around the first of the year rather than right now though in order to give FP&L time to discuss the licensing agreement option.

>Movement on Pole rental rates.

-Tom said that the CATV rates do not recover enough for the real cost of the pole. FP&L really does not want to negotiate reducing Verizon's pole rental rate. Pole rental rates were recently negotiated about 6 years ago and FP&L was a little disappointed that they were reduced, but FP&L's rate was also reduced. Steve said that Verizon's position is that "we need a fair and reasonable rate in order to compete with our competition." Steve said that Verizon's access lines have greatly decreased over the years and now it has become difficult to justify paying the existing rate, Verizon's business model has changed drastically. Steve said that FP&L needs to understand that Verizon is in a competitive environment, FP&L is not in a competitive environment. Verizon is now unregulated. Steve's desire is for Tom to assist Verizon by discussing this position with FP&L's executive management.

>Steve wants Tom to send him a License agreement. Tom said he should be able to get something to Verizon by the 31st of October.

Meeting adjourned 9:46am

Next meeting:
November 1st. 9am conference call
1-866-818-0651 PC 904-6432#

Regards,

Sam Wasmundt
Joint Use Pole Administrator
Verizon Florida LLC
1909 Us Hwy. 301 N.

MC FLG2-750
Bldg. D 2nd Floor
Tampa, FL 33619
sam.wasmundt@verizon.com
813-627-8358

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From: Lindsay, Steven R (Steve)
Sent: Tuesday, October 18, 2011 8:22 AM
To: 'Kennedy, T J'; Wasmundt, Samuel (Sam)
Cc: Lindsay, Steven R (Steve)
Subject: Topic's for this mornings call

Hello Tom,

I have only a few things I'd like to talk about this morning:

- Mitigation Fee – Do you have an estimate?
- Status on the License Agreement?
- Is FP&L open to a reciprocal license agreement – now?
- Can there be any movement on the pole rental rates?

Steve Lindsay
Section Manager
Centralized Joint Use
813-664-6047

Kennedy, T J

From: Lindsay, Steven R (Steve) <steve.lindsay@verizon.com>
Sent: Tuesday, November 01, 2011 11:09 AM
To: Kennedy, T J; Wasmundt, Samuel (Sam)
Cc: Walker, Sanford C (Sanford)
Subject: RE: Wireline Linear Attachment Agreement-minutes from November 1st meeting.

What I got from the discussion is that FP&L may be interested in renegotiating a new agreement if the terms are acceptable to FP&L. Also FP&L would like to keep the current agreement in place governing their attachments to VZ poles..

Steve Lindsay
Staff Consultant
Centralized Joint Use
352-503-5017

From: Kennedy, T J [mailto:T.J.Kennedy@fpl.com]
Sent: Tuesday, November 01, 2011 10:19 AM
To: Wasmundt, Samuel (Sam); Lindsay, Steven R (Steve)
Cc: Walker, Sanford C (Sanford)
Subject: RE: Wireline Linear Attachment Agreement-minutes from November 1st meeting.

Thank you Sam,

I just want to mention that I believe the terms "is not interested in renegotiating the agreement" give off a negative overtone, which I tried not to express during our call. I realize it is not a quote and that you are trying to capture my verbal expressions and feelings.

Best Regards,
Tom

Thomas J. Kennedy, P.E.
Principal Regulatory Affairs Analyst

Florida Power and Light Company
DRS/AOB
7200 NW 4th ST
Plantation, FL 33317-2211
Office: 954-321-2241
FAX: 954-321-2135

From: Wasmundt, Samuel (Sam) [mailto:sam.wasmundt@verizon.com]
Sent: Tuesday, November 01, 2011 10:06 AM
To: Kennedy, T J; Lindsay, Steven R (Steve)
Cc: Walker, Sanford C (Sanford)
Subject: Wireline Linear Attachment Agreement-minutes from November 1st meeting.

Tom/Steve,

Below are the minutes from today's meeting.

Meeting began via teleconference call at 9am

>License Agreement

-Steve: FP&L does not normally offer this agreement to Verizon. Tom: Supposed to help Verizon understand what other company's get verse what Verizon is currently getting to help Steve to make a more informed decision on which direction to take.

-Steve: A few things stand out in the agreement.

-What are the differences between this one and the old one?

-Tom: addresses timelines because regulations change. Needs to be vague.

-Tom: FP&L doing transfers

-Tom: Penalties for unauthorized attachments.

-Steve: 1.21 "Usable space," Tom: defined there because (2.5 and 2.6). FCC states that you are paying per foot of space. "If you are only going to pay for 1 foot then you are going to only occupy 1 foot. 1/13th space for strength.

-Steve: reservation of space. Is the buffer included? Tom: No (i.e., 40 inches). "If a CLEC is in the communication space," is it subject to removal?

-Steve: geographic limits? Tom: Some companies are both an ILEC and a CLEC. Verizon will need to operate under the Joint Use Agreement if operating as an ILEC, but if operating as a CLEC then Verizon would need to operate as a Licensee. Tom: this might be tough to enforce.

-Steve: (3.5 paragraph "C") "Installation of attachments." Within 15 feet of primary. Tom: NESC agreement. Licensee must pull a permit to attach. Joint Use Agreement has a written agreement to attach and communication with the FP&L and Verizon engineer has a verbal agreement to attach.

-Steve: (3.5 paragraph "E"). "Pole tagging." Tom: every 5th pole excluding a street crossing (place tag on that particular pole). Cable must also be tagged.

-Steve: (4.2). "Attachment fees." Back Rent, plus $50. Tom: June 1st 2010. Every year FP&L adjusts the fee and recalculated. Using the presumption of five attachers per pole. Multiply by 2/3rds. FP&L is appealing the rate. Does the FCC have jurisdiction over ILECs? Steve: $139 per attachment on transmission pole (4 feet allowable space), under the Joint Use Agreement.

-Steve: attaching to street light poles. Tom: FCC does not regulate street light poles. Street light poles are 100% leased to the county or city therefore no 3rd party attachers would be allowed to attach.

-Steve: (4.3) "Bond and Removal of Fees." Tom: this paragraph is more for CLECs as opposed to ILEC. ILECs typically are not in jeopardy of going out of business.

-Steve: Is FP&L legal department open to Verizon becoming a Licensee. Tom: FP&L would not be the one to make the decision. Tom's management would be the ones to make the decision. FP&L Legal would only advise. FP&L wants to wait until the FCC ruling challenge court decision has been made, before they decide if Verizon should be a Licensee. *Should be decided within a year. Steve: The FCC has made a decision and Verizon is interested in becoming a Licensee regardless of the current FCC ruling challenge court proceedings. Tom: FP&L wants Verizon to make them an offer. FP&L is satisfied with the current agreement and is not interested in renegotiating the agreement. Tom: His role in these discussions is merely to share information with Verizon and not actually renegotiate a new agreement. FP&L prefers to operate under the current Joint Use Agreement.

Meeting adjourned 10:04am

Next meeting. November16th 9am teleconference call
1-866-818-0651 PC 904-6432#

Regards,

Sam Wasmundt
Joint Use Pole Administrator
Verizon Florida LLC
1909 Us Hwy. 301 N.
MC FLG2-750
Bldg. D 2nd Floor
Tampa, FL 33619
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813-627-8358

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Steve,

In cooperation with the spirit of negotiation of the existing joint use agreement, I am attaching to this email FPL's current Linear Facilities Pole Attachment Agreement. It is important to note that FPL is not offering this agreement to Verizon and would not normally allow a non-applicable agreement to be used in this manner. FPL is providing this agreement to Verizon at their request, such that it is not necessary for Verizon to obtain the agreement through discovery in a complaint proceeding as noted in the FCC 11-50 Order. I'd be happy to discuss this agreement with you during our meeting tomorrow.

Regards,
Tom

Thomas J. Kennedy, P.E.
Principal Regulatory Affairs Analyst

Florida Power and Light Company
DRS/AOB
7200 NW 4th ST
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Office: 954-321-2241
FAX: 954-321-2135

Kennedy, T J

From: Wasmundt, Samuel (Sam) <sam.wasmundt@verizon.com>
Sent: Wednesday, November 16, 2011 10:42 AM
To: Kennedy, T J; Lindsay, Steven R (Steve)
Cc: Walker, Sanford C (Sanford)
Subject: FW: Wireline Linear Attachment Agreement-minutes from November 16th meeting.
Attachments: FP&L Wireline Attachment Agreement rev_10-31-11-license to attach-kennedy.doc

Below are the minutes from today's meeting (November 16th).

Meeting began via teleconference call at 9am

>Pole Ownership – FP&L would like to own all of the poles. Steve is waiting on Verizon Accounting in Texas to get back to him to establish the value of the Verizon poles.

>Steve: Verizon to provide a proposal to FP&L

-Amend the existing Joint Use Agreement adopting a rate based on the new FCC rules. Plus adding language that helps the pole owner to recover costs such as make ready fully.

-Change to a reciprocal license agreement each paying the appropriate rate.

-Sell or trade our jointly used poles to FP&L in exchange for a license agreement and a lower rate.

>Steve eventually wants Verizon to meet with the FP&L Executive Level.

>Alpine Communications – Attachment permitting

>Tom and Steve will be off during the Thanksgiving holiday. We have scheduled a follow up call for December 7th which may include our managers to discuss proposal.

Meeting adjourned 9:24am

Next meeting. December 7th 1pm teleconference call
1-866-818-0651 PC 904-6432#

Regards,

Sam Wasmundt
Joint Use Pole Administrator
Verizon Florida LLC
1909 Us Hwy. 301 N.
MC FLG2-750
Bldg. D 2nd Floor
Tampa, FL 33619

Kennedy, T J

From: Wasmundt, Samuel (Sam) <sam.wasmundt@verizon.com>
Sent: Wednesday, December 07, 2011 1:41 PM
To: Kennedy, T J; Lindsay, Steven R (Steve)
Subject: FW: Wireline Linear Attachment Agreement-minutes from December 7th meeting.
Attachments: FP&L Wireline Attachment Agreement rev_10-31-11-license to attach-kennedy.doc

Minutes from today's meeting

In attendance:
Dave Bromley-FP&L
Tom Kennedy-FP&L
Jim Slavin-Verizon
Steve Lindsay-Verizon
Sam Wasmundt-Verizon

12-07-2011 1pm

>Dave: Is looking at this issue two ways

-Unless it is a benefit to FP&L or it's customer's FP&L is not interested in modifying the existing JU contract.

-Really only interested in an agreement on future attachments.

>Steve: Licensee vz. Joint Use

-Verizon pays three times more for attachments compared to Verizon's competitors.

-Verizon is willing to become a Licensee for existing and future attachments

-There is no benefit for Verizon to entertain new attachment Joint Use Agreements.

-Verizon is comparing what benefits between what the CATV gets for their pole rental fee and what Verizon gets and Verizon does not see a major difference.

-Verizon may petition the FCC for rate relief.

-Verizon is interested in a fair and reasonable rate.

-Verizon is now de-regulated.

>Dave: To Steve-Do you think that the FCC distinguishes between Verizon and a CATV attacher? Steve: Verizon offers similar or the same services as CATV and therefore Verizon believes that Verizon should be given the same rate as CATV.

-Dave: Referred to pages 95 and 96 of the FCC 11-50 document.

-Dave believes that the FCC does view Verizon as being different than CATV and should therefore be treated differently by FP&L.

-Jim: Verizon still needs a fair and reasonable rate.

>Tom: Verizon agreed to pay a Joint Use rate. The Electric customers would be hurt by Verizon having a reduced rate.

-FP&L has placed poles with Verizon facilities in mind (i.e., taller poles).

-Steve: Agreed that Verizon is probably paying a wholesale rate compared to a "per pole" rate.

-Tom: FP&L is barely recovering 50% of the actual cost of the pole even with Verizon paying the current rate.

>Dave: This is a difficult subject and would be hard to come to a decision any time soon.

>Steve: Offered to become a Licensee and or sell Verizon owned poles to FP&L.

>Dave: FP&L said that they are considering all offers from Verizon.
>Jim: Verizon does not want FP&L to take a position that would be detrimental to FP&L and it's customers.
>Steve: Will send a formal letter inviting FP&L and Verizon to an executive level meeting in the near future.
>Jim: The main objective of Verizon is get a rate that is in line with our competitors. Verizon will continue to live up to our existing agreements and cooperate fully with FP&L.
>Dave: FP&L appreciates Verizon coming to the table and discussing this issue.

>Meeting adjourned.

1:23pm

Next meeting: TBD

Regards,

Sam Wasmundt
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MC FLG2-750
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Tampa, FL 33619
sam.wasmundt@verizon.com
813-627-8358

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From: Wasmundt, Samuel (Sam)
Sent: Wednesday, December 07, 2011 8:04 AM
To: Lindsay, Steven R (Steve); 'Kennedy, T J'
Subject: FW: Wireline Linear Attachment Agreement-minutes from November 16th meeting.

Reminder of today's call at 1pm today

Regards,

Sam Wasmundt
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Verizon Florida LLC
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"Life is what happens to you while you're busy making other plans" - John Lennon

Exhibit B

Before the
Federal Communications Commission
Washington, DC 20554

Verizon Florida LLC	)
Complainant,	)
v.	)
Florida Power & Light Company, LLC	)
Respondent.	)

Declaration of Roger A. Spain, CPA, CFA, ABV, CVA

Background Information

1. My name is Roger Spain and I have been engaged to review joint use pole adjustment rates for poles jointly used by Florida Power & Light Company ("FPL") and Verizon Florida LLC ("Verizon"). After performing my review, I have made several observations and reached several conclusions, which are set forth below in this declaration.

2. I am a principal with Aldridge, Borden & Company, P.C. in Montgomery, Alabama. We are a CPA firm providing a wide range of specialized services, including management consulting, strategic planning, litigation consulting, business valuation, mergers and acquisitions consulting, tax planning and compliance, auditing, and information technology consulting.

3. My own areas of expertise include accounting and business consulting in several industries, including the utility industry. As an auditor, I have performed numerous audits of electric distribution utilities, and several other types of utilities over the past 23 years. I have

also performed numerous consulting engagements in the utilities arena, including cost of service studies, rate analysis and design engagements, property plant and equipment analyses, and feasibility studies. Companies for whom I have performed these services have been electric providers, telephone companies, cable television and satellite dish companies, natural gas companies, retail propane companies and water systems. I also have significant experience in auditing and tax related work in the general business environment. I am a Certified Public Accountant. I hold various business valuation related credentials including the Chartered Financial Analyst designation through the CFA Institute, the American Institute of Public Accounting's Accredited in Business Valuation credential, and the Certified Valuation Analyst designation through the National Association of Certified Valuation Analysts. I have a B.S. in Business Administration (Accounting) from Auburn University.

4. I have testified regarding pole attachment issues before the Federal Communications Commission and in North Carolina and Florida state courts. I have testified concerning various other financial and economic issues in Federal Court, various state courts and before the Alabama Public Service Commission.

Historical Rates for Joint Use Between FPL and Verizon

5. On January 1, 1975, FPL and Verizon (through its predecessor in interest) entered into a Joint Use Agreement, which was amended by Supplemental Agreement dated March 29, 1978. Under the Joint Use Agreement, each party allows the other to use its utility poles for purposes of attaching facilities to distribute their respective services to customers in their overlapping territories.

6. The Joint Use Agreement set forth a rate of $6.50 per pole for poles attached by either party and stated that the party with more attachments will pay the net amount due under the terms of the Agreement. In March of 1978, the parties agreed to amend the Agreement to provide for a rate of $7.27 per pole for the 1977 calendar year. This amendment further provided that the rate in years after 1977 would be half of the average annual cost of joint use poles for the next preceding year as determined by the party owning the majority of the jointly used poles. The amendment defined the annual cost of joint use poles as the average historical in-place cost of joint use poles, excluding special poles, multiplied by an annual charge rate comprised of: straight line depreciation, investment tax credit, deferred taxes, state and federal taxes, cost of equity (common and preferred), and cost of long term debt.

7. Although the source of the $7.27 rate set forth in the amendment to the Agreement is not described, this $7.27 rate is equal to the 1975 rate of $6.50 brought forward to 1977 using the annual Consumer Price Index ("CPI").[1]

[1] The Consumer Price Index is a general measure of inflation published by the US Government Bureau of Labor Statistics.

8. The rate from 1975 of $6.50 brought forward to 2012 using CPI data yields a rate of $26.89. Any rate below $26.89 would place the net payer (owning fewer poles) in a better economic position relative to its position at the onset of the Agreement in 1975.

Cost Sharing for a Jointly Used Network of Poles

9. In the case of FPL and Verizon, both entities have needed access to a network of poles to deliver their services. For numerous reasons the parties agreed to share the cost of building one jointly used network suitable to each party. When entering this agreement and relationship, each party knew that it would invest significant up front sums and carry the physical and financial responsibility of pole ownership and maintenance, or that it would pay an agreed upon amount for joint use equity settlement payments in lieu of those investment and ownership costs.

10. Viewed in this important historical context, joint use equity settlement payments are an alternative to the significant costs of pole network construction and ownership. These alternatives cannot be separated because one party has avoided a greater burden of the ownership costs and later deems its joint use cost to be higher than it wishes. It stands to reason that in situations where one party has made very little investment in the jointly used network of poles with another party, the party that has carried a low construction and ownership burden should pay much more in the alternative periodic joint use equity settlement payments.

11. In the event that one party owns substantially less of the joint use network than its allocated share of costs under the joint use agreements, that party will pay a higher equity settlement expense but avoid corresponding construction and ownership costs. In light of these

two alternatives, adjustment rates can be viewed as a proxy for ownership costs, and thus paying an equity settlement is analogous to paying avoided ownership costs.

12. Cost sharing agreements are fundamentally altered when the cost allocation is changed. Had each party constructed and maintained a number of poles equivalent to achieve its allocation percentage, there would be no net joint use equity settlement payments. Rather, each party would be paying for its allocated share of this jointly used network of poles through construction and ownership costs, with no need for a joint use equity settlement payment to adjust for the disparate ownership costs. Only when one party has avoided capital investment in and annual maintenance of its allocated share of the joint use network of poles is there a need for a joint use equity settlement payment.

13. Under the terms of the Agreement, joint use adjustment rates are reflective of the actual costs of constructing and maintaining a shared elevated utility corridor jointly used by both parties. These calculations and rates are not the product of or influenced by other data (such as is the case with the indices). As stated above, any adjustment rate below the 1975 Agreement rate indexed for inflation puts the licensee (as opposed to the pole owner) in a better economic position relative to its position at the onset of the agreements. Additionally, any such rate below the 1975 Agreement rate indexed for inflation will result in an under recovery of costs compared to the manner of cost sharing as it was mutually agreed upon in the Agreement. Simply stated, if the annual pole cost of the pole owner, and the resulting adjustment rate, grows faster than the originally agreed upon rate grown at inflation, the pole owner should be able to recover a minimum of the original rate grown at inflation. Otherwise, the pole owner would be in a worse position as a result of assuming the burden and expense of investing in the jointly used pole network.

Methodology in the Joint Use Agreement

14. The methodology for calculating the joint use adjustment rate under the amended Agreement is specified as the average historical in-place cost of joint use poles, excluding special poles, multiplied by an annual charge rate comprised of: straight line depreciation, investment tax credit, deferred taxes, state and federal taxes, cost of equity (common and preferred), and cost of long term debt. As a result the adjustment rate and the related annual pole cost do not include all costs to carry and own the network of jointly used poles. Examples of these omitted costs include administrative and general expenses, operating and maintenance expenses, and property taxes.[2]

15. These are clearly costs directly related to the ownership and maintenance of the network of jointly used poles. Further, these costs are substantial components of that overall ownership cost. Therefore, excluding these costs is to the substantial detriment of the party owning more poles, which is FPL in this case.

16. In order to assess the impact of omitting these costs from the joint use adjustment rate between the parties, I have analyzed some information relating to those costs. For the twenty years from 1993 to 2012 the annual carrying charge rates under the provisions of the amended Agreement that excluded the costs noted in paragraph 14 above have been approximately 12%.[3] This annual carrying charge rate is based on the pole costs used in the amended Agreement methodology which is calculated using the gross pole cost for FPL (excluding accumulated depreciation).

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[2] The omitted costs are included in the FCC telecommunications methodology and are customarily included in negotiated joint use agreements.

[3] This carrying charge rate was obtained from FPL's Joint Use Attachment Rate Calculation Worksheet for the 2012 rate.

17. However, using the pole cost net of accumulated depreciation, and accounting for the ownership costs relating the administrative and general, operating and maintenance, and property tax expenses, the annual charge rate is approximately 30%.[45]

18. Applying this revised annual charge rate of approximately 30% to the net cost of a pole yields an annual pole cost for 2012 of $90.89. Allocating this annual pole cost at 50% to each party to the Joint Use Agreement, results in a joint use adjustment rate of $45.45, well above the $36.23 rate under the amended Agreement methodology.[6]

19. Although Verizon has taken exception with the 50/50 allocation of the annual pole cost as provided in the Agreement, this allocation is similar to the parties' expectations as described in the Agreement. Section 1.1.7 provides for standard space for FPL of 6 feet and for Verizon of 4 feet. Assuming an equal allocation for the unusable pole space between the parties to the Joint Use Agreement, the resulting allocation of 50/50 for joint use poles between the parties to the Joint Use Agreement is reasonable. However, setting this aside, consideration of the reasonableness of the 50/50 allocation in the Agreement must be analyzed in light of the previously discussed omission of substantial ownership costs. This is because the 50/50 allocation and the exclusion of certain substantial ownership costs mitigate one another with opposing affects.

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[4] This estimated carrying charge rate was obtained from FPL's alternate Joint Use Pole Attachment Rate Calculation Worksheet that includes carrying charges in accordance with the FCC Formula for the 2012 rate.

[5] The 12% carrying charge rate applicable to the amended Agreement and the 30% carrying charge rate calculated using the administrative and general, operating and maintenance, and property tax expenses and based on pole costs net of accumulated depreciation are not directly comparable due to the difference in calculating pole costs under each method. This information is provided to show the wide variance in the two methodologies.

[6] This annual pole cost is obtained from FPL's alternate Joint Use Pole Attachment Rate Calculation Worksheet that includes carrying charges in accordance with the FCC Formula for the 2012 rate. This worksheet contains notable assumptions for the carrying charge rate prior to 2010, which was estimated at 30% based on the calculations for 2010 to 2012, and the accumulated depreciation on 35', 40', and 45' wood poles, which was estimated at 48% for all vintages of poles. The accumulated depreciation is likely overstated on the most recent and heavily weighted poles in the pole cost and adjustment rate calculation, which would understate the illustrative pole cost and adjustment rate calculations referenced above.

20. Through its consultant, Verizon has offered a description of the calculations that it asserts yield presumptively just and reasonable adjustment rates based on the FCC new and prior telecommunications formulae. Verizon's calculations are based on an average pole size of 41 feet rather than the rebuttable presumption of 37.5 feet. It is my understanding the assumed 41 foot average pole size used by Verizon in its calculation is disputed by FPL.

21. Additionally, Verizon has assumed that the space occupied input into the FCC methodology should be 1 foot. This is contrary to the four feet it reserved in the Agreement.

22. Verizon correctly noted that the 2011 attachment rate applicable to one foot of occupied space was $9.31 using a presumed 37.5 foot pole under the new FCC methodology, which allows for an Urbanized Service Area Allocation of 66% of the net cost of a bare pole. Using the prior FCC methodology, which did not include an urban allocation, the 2011 attachment rate applicable to one foot of occupied space was $14.11.

23. Applying the attachment rate of $9.31 for one foot of space occupied to the four feet of space reserved by Verizon yields a rate for the full four feet of space of $37.48. The prior FCC attachment rate of $14.11 for one foot of space occupied applied to the four feet of space reserved by Verizon yields a rate for the full four feet of space of $56.44.

24. For 2012, applying the calculated attachment rate of $9.78 for one foot of space occupied to the four feet of space reserved by Verizon yields a rate for the full four feet of space of $39.12. The prior FCC attachment rate of $14.83 for one foot of space occupied applied to the four feet of space reserved by Verizon yields a rate for the full four feet of space of $59.32.

Investment in the Joint Use Network of Poles

25. Since the beginning of the joint use arrangement between FPL and Verizon, each party has constructed its network of joint use poles to accommodate the joint use of both parties. But for this joint use, FPL would have constructed poles that were shorter and of less strength. This would have resulted in lower capital and ongoing ownership costs to FPL. Additionally, absent providing for joint use under the terms of an agreement, the attaching party would have had to pay for full make ready costs to install the taller and stronger poles needed to accommodate its lines and infrastructure.

26. As a result, the parties have a substantial investment in taller and stronger poles to accommodate the joint use needs of the other participating party. FPL, as the owner of approximately 90% of the joint use poles, has made a much greater investment in that network of taller and stronger poles.

27. Keeping the provisions of the Agreement in effect until the attaching party removes its attachments, protects both parties by ensuring that the attaching party will have access to its intended joint use network of poles, and ensuring the pole owner that cost sharing of the capital and ownership costs will be under the arrangement existing at the time the joint use pole network was constructed.[7]

28. In order to accommodate the requirements of joint use, FPL estimates that it has installed poles that were five feet taller approximately 40% of the time and ten feet taller approximately 60% of the time. FPL has compiled thirteen years of pole cost data comparing 35 foot, 40 foot, and 45 foot wood poles. Assuming that the five foot taller poles installed 40% of the time were split evenly between 40 foot and 45 foot poles and using FPL's pole cost data for 2001 to 2013, FPL's incremental cost to construct the joint use network of poles was approximately 32%

[7] See Joint Use Agreement, Article XVI.

greater than it would have been without the need for accommodating joint use. This 32% greater required investment in poles also carries some increases in the ownership costs of those same poles due to the increased size of the poles.

29. These higher costs borne by the pole owner and caused by accommodating joint use are part of the cost of the joint use network of poles that is divided among the joint users, as well as other attaching parties. Terminating the applicability of the Agreement to the existing joint use pole attachments and replacing the rate specified under the amended Agreement with a rate similar to the FCC's prior and new telecommunications formulae will significantly reduce the pole owner's ability to recover these incremental pole costs resulting from accommodating joint use. The result in this case will be a substantial shift in the sharing of those incremental costs caused by joint use accommodation from a 50/50 level to a one that places a substantially higher portion of the incremental cost burden on the pole owning party which did not cause the incremental cost.

Conclusion

30. Consideration of the issue of whether a rate is just and reasonable as it relates to joint use agreements must weigh the actual costs of the pole owner and the shared nature of the pole network as contemplated and intended at the onset of the joint use relationship. Recognizing that the parties to a joint use agreement entered into that agreement acknowledging the mutual benefit of a joint use network of poles, the original rate indexed for inflation and the actual costs of the pole owner are important relevant factors to consider in the determination of whether a rate is just and reasonable. Further, these rates and related payments are made in lieu of investing in the construction of the jointly used network of poles and the costs of ownership associated therewith.

31. The joint use adjustment rates are reflective of the amended Agreement terms calculated annually using actual costs of construction and ownership. A meaningful comparison for the adjustment rates is to view these rates against the Agreement rate in 1975 of $6.50 brought forward at an inflationary index. Comparing the actual adjustment rates to the calculated CPI inflated amounts over time provides one a meaningful analysis of the current rate in the context of the parties' original agreement.

32. In the present case, it is also important to consider the original intention of the parties as it relates to allocating 6 feet and 4 feet to FPL and Verizon, respectively. This relative space allocation, the 50/50 cost sharing allocation, and the exclusion of certain substantial ownership costs all should be considered in the analysis of the reasonableness of the methodology and rates between the parties.

33. Reducing dramatically a licensee's adjustment rate by altering the allocation or allowable elements of recoverable costs after many years of joint use accommodation at an increased cost to the net pole owner in a joint use agreement relationship adversely affects that net pole owner whose customers must then bear incremental costs caused by the attaching party. Meanwhile, this modification will benefit the attaching party which caused the higher incremental costs and avoided the burdens of greater pole ownership.

34. In light of the nature and amount of the joint use adjustment rates applicable to the 1975 Agreement between FPL and Verizon, it is my opinion that these rates are just and reasonable.

35. Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury the facts sets forth in this declaration are true to the best of my knowledge. Executed on the 4th day of April, 2014.

Roger A. Spain, CPA, CFA, ABV, CVA

Attachment A

ROGER A. SPAIN, CPA, CFA, ABV, CVA

Roger Spain is a principal with the accounting firm Aldridge, Borden & Company, P.C., in Montgomery, Alabama. He is a 1990 graduate of Auburn University where he received a Bachelor of Science degree in Accounting.

Roger's area of expertise is in accounting and business consulting. He has significant experience in the utility industries and the business valuation service area. He has worked on various engagements in the utilities industry including audits, cost of service studies, rate design, and feasibility studies. Industries served within the utilities area include electric distribution systems, telecommunications service providers, cable providers, satellite dish service providers, natural gas companies, and water systems. Roger is a Certified Public Accountant (CPA) licensed to practice in Alabama. Also, he has earned the Chartered Financial Analyst (CFA) designation offered by the Chartered Financial Analyst Institute. Roger has also been awarded the Accredited in Business Valuation (ABV) credential by the American Institute of Certified Public Accountants. Additionally, Roger holds the Certified Valuation Analyst (CVA) designation offered by the National Association of Certified Valuation Analysts.

He is active in the Montgomery community through various projects and organizations. Roger is an active board member of several local charities including the River Region United Way, Montgomery Museum of Fine Arts, Blue Gray Collegiate Tennis Tournament and YMCA. He is also an active member of First United Methodist Church.

Education/Certification

Bachelor of Science in Accounting, Auburn University, 1990
Certified Public Accountant, Alabama, 1992
Certified Valuation Analyst, 2003
Chartered Financial Analyst, 2006
Accredited in Business Valuation, 2006

Areas of Practice

Business Valuation and Related Advisory Services
Management Advisory and Consulting Services
Traditional Accounting and Tax Services

Professional Memberships

American Institute of Certified Public Accountants
Alabama Society of Certified Public Accountants
National Association of Certified Valuation Analysts
Chartered Financial Analyst Institute

Teaching

Numerous Courses on Utility Accounting throughout the United States
Auburn University, Professor for a Day Program

Florida Power & Light
Rate Analysis

Year	CPI Raw Data	1975 Rate at CPI	Joint Use Rate at 50% of Annual Pole Cost	Annual Pole Cost
1975	55.500	6.50	6.50	13.00
1976	58.200	6.82	6.50	13.00
1977	62.100	7.27	7.27	14.54
1978	67.700	7.93	7.75	15.50
1979	76.700	8.98	8.27	16.54
1980	86.300	10.11	9.95	19.90
1981	94.000	11.01	9.58	19.16
1982	97.600	11.43	10.66	21.32
1983	101.300	11.86	11.45	22.90
1984	105.300	12.33	12.38	24.76
1985	109.300	12.80	13.53	27.06
1986	110.500	12.94	14.82	29.64
1987	115.400	13.52	15.83	31.65
1988	120.500	14.11	16.40	32.80
1989	126.100	14.77	16.86	33.71
1990	133.800	15.67	17.46	34.92
1991	137.900	16.15	18.79	37.57
1992	141.900	16.62	19.58	39.16
1993	145.800	17.08	21.70	43.40
1994	149.700	17.53	22.75	45.49
1995	153.500	17.98	23.85	47.70
1996	158.600	18.57	25.90	51.80
1997	161.300	18.89	27.33	54.66
1998	163.900	19.20	28.81	57.61
1999	168.300	19.71	29.90	59.79
2000	174.000	20.38	30.50	60.99
2001	176.700	20.69	31.82	63.64
2002	180.900	21.19	32.90	65.80
2003	184.300	21.58	34.04	68.08
2004	190.300	22.29	30.52	61.04
2005	196.800	23.05	31.17	62.33
2006	201.800	23.63	32.24	64.48
2007	210.036	24.60	33.14	66.28
2008	210.228	24.62	33.81	67.62
2009	215.949	25.29	34.13	68.25
2010	219.179	25.67	34.83	69.65
2011	225.672	26.43	35.47	70.93
2012	229.601	26.89	36.23	72.45

Joint Use Distribution Poles 2013

JOINT USE POLE ATTACHMENT RATE CALCULATION

Last Updated:
Completed:
Approved:

	H		
Totals / Average	405,041	100.00%	$72.45

#	Year	Poles Installed	% Left	Surviving Poles	% of Population	Carrying Charges	Pole Cost	Weighted Average
		A	B	C=AxB	D D=C/H	E	F	G=DxExF
1	2012	18,817	99.86%	18,791	4.6392%	11.04%	$ 843.10	$ 4.32
2	2011	8,601	98.86%	8,503	2.0993%	10.85%	$ 975.60	$ 2.22
3	2010	12,125	97.56%	11,829	2.9205%	10.85%	$ 908.28	$ 2.88
4	2009	17,082	96.14%	16,423	4.0546%	10.52%	$ 660.41	$ 2.82
5	2008	18,082	94.75%	17,133	4.2299%	11.83%	$ 710.77	$ 3.56
6	2007	31,009	93.30%	28,931	7.1428%	11.77%	$ 688.48	$ 5.79
7	2006	39,321	91.72%	36,065	8.9041%	11.87%	$ 664.34	$ 7.02
8	2005	19,535	90.02%	17,585	4.3416%	12.44%	$ 592.40	$ 3.20
9	2004	14,772	88.27%	13,039	3.2192%	12.12%	$ 613.81	$ 2.39
10	2003	26,900	86.21%	23,190	5.7255%	11.85%	$ 593.18	$ 4.03
11	2002	16,734	83.99%	14,055	3.4700%	12.07%	$ 587.09	$ 2.46
12	2001	18,733	81.87%	15,337	3.7865%	12.03%	$ 643.78	$ 2.93
13	2000	19,444	79.61%	15,479	3.8217%	12.17%	$ 412.02	$ 1.92
14	1999	18,451	76.98%	14,204	3.5067%	11.85%	$ 556.24	$ 2.31
15	1998	17,111	74.21%	12,698	3.1350%	12.65%	$ 671.57	$ 2.66
16	1997	13,907	71.00%	9,874	2.4378%	12.98%	$ 606.64	$ 1.92
17	1996	14,032	67.72%	9,502	2.3461%	12.97%	$ 600.45	$ 1.83
18	1995	15,030	64.21%	9,651	2.3827%	12.30%	$ 564.29	$ 1.65
19	1994	15,530	60.06%	9,327	2.3028%	12.38%	$ 606.04	$ 1.73
20	1993	19,813	55.95%	11,085	2.7369%	12.87%	$ 507.27	$ 1.79
21	1992	37,997	51.64%	19,622	4.8444%	15.02%	$ 438.65	$ 3.19
22	1991	13,976	47.42%	6,627	1.6362%	15.83%	$ 407.14	$ 1.05
23	1990	17,405	43.48%	7,568	1.8684%	15.58%	$ 416.47	$ 1.21
24	1989	19,993	39.94%	7,985	1.9715%	15.60%	$ 390.33	$ 1.20
25	1988	21,504	36.23%	7,791	1.9235%	15.95%	$ 368.78	$ 1.13
26	1987	20,828	32.47%	6,763	1.6697%	18.13%	$ 269.62	$ 0.82
27	1986	23,648	28.51%	6,742	1.6645%	18.35%	$ 313.04	$ 0.96
28	1985	25,437	24.62%	6,263	1.5462%	17.37%	$ 345.24	$ 0.93
29	1984	24,230	21.33%	5,168	1.2760%	17.51%	$ 311.67	$ 0.70
30	1983	19,842	18.57%	3,685	0.9097%	17.51%	$ 286.96	$ 0.46
31	1982	18,922	16.17%	3,060	0.7554%	17.40%	$ 283.19	$ 0.37
32	1981	24,345	13.42%	3,267	0.8066%	16.50%	$ 274.64	$ 0.37
33	1980	20,338	10.99%	2,235	0.5518%	16.20%	$ 249.94	$ 0.22
34	1979	19,676	8.85%	1,741	0.4299%	15.34%	$ 243.33	$ 0.16
35	1978	16,763	6.66%	1,116	0.2756%	15.26%	$ 249.39	$ 0.10
36	1977	13,090	4.95%	648	0.1600%	14.52%	$ 212.96	$ 0.05
37	1976	15,207	3.66%	557	0.1374%	13.69%	$ 208.46	$ 0.04
38	1975	15,130	2.69%	407	0.1005%	15.05%	$ 174.37	$ 0.03
39	1974	20,988	1.62%	340	0.0839%	14.62%	$ 144.67	$ 0.02
40	1973	26,523	1.14%	302	0.0746%	14.44%	$ 133.64	$ 0.01
41	1972	27,774	0.62%	172	0.0425%	14.10%	$ 123.23	$ 0.01
42	1971	27,780	0.41%	114	0.0281%	14.55%	$ 109.33	$ 0.00
43	1970	26,548	0.31%	82	0.0203%	14.76%	$ 102.95	$ 0.00
44	1969	21,771	0.21%	46	0.0113%	14.38%	$ 90.16	$ 0.00
45	1968	23,495	0.16%	38	0.0093%	14.47%	$ 85.93	$ 0.00

Information on rate calculation schedule:

45 year history in contract with attaching parties
Use data up through prior year
Poles installed refers to pole additions in CATS provided by Property Accounting
Iowa curve is agreed upon methodology to estimate surviving poles for each year
Surviving poles each year divided by total poles at year end gives % of poles from each yea
Carrying charges for each year come from Revenue Requirements and Financial Assumptions provided by Finance Department each year
Pole cost is average of cost of all 35, 40 and 45 foot poles installed per estimate costs in WMS plus allocation of total clearing and grubbing costs for the year over total number of poles added per CATS
Weighted average is carrying charges times the population % time the pole cost to get an average of costs for that year's poles. Sum of the average of the 45 years worth of poles is the current year rate.

Joint Use Distribution Poles 2013

Last Updated: 03/31/14
Completed: 03/31/14

JOINT USE POLE ATTACHMENT RATE CALCULATION
INCLUDES CARRYING CHARGES IN ACCORDANCE WITH FCC FORMULA

	H		
Totals / Average	405,041	100.00%	$90.89

#	Year	Poles Installed	% Left	Surviving Poles	% of Population	Carrying Charges	Pole Cost	Weighted Average
		A	B	C=AxB	D D=C/H	E	F	G=DxExF
1	2012	18,817	99.86%	18,791	4.6392%	29.27%	$ 438.41	$ 5.95
2	2011	8,601	98.86%	8,503	2.0993%	30.61%	$ 507.31	$ 3.26
3	2010	12,125	97.56%	11,829	2.9205%	30.57%	$ 472.31	$ 4.22
4	2009	17,082	96.14%	16,423	4.0546%	30.00%	$ 343.41	$ 4.18
5	2008	18,082	94.75%	17,133	4.2299%	30.00%	$ 369.60	$ 4.69
6	2007	31,009	93.30%	28,931	7.1428%	30.00%	$ 358.01	$ 7.67
7	2006	39,321	91.72%	36,065	8.9041%	30.00%	$ 345.46	$ 9.23
8	2005	19,535	90.02%	17,585	4.3416%	30.00%	$ 308.05	$ 4.01
9	2004	14,772	88.27%	13,039	3.2192%	30.00%	$ 319.18	$ 3.08
10	2003	26,900	86.21%	23,190	5.7255%	30.00%	$ 308.46	$ 5.30
11	2002	16,734	83.99%	14,055	3.4700%	30.00%	$ 305.29	$ 3.18
12	2001	18,733	81.87%	15,337	3.7865%	30.00%	$ 334.77	$ 3.80
13	2000	19,444	79.61%	15,479	3.8217%	30.00%	$ 214.25	$ 2.46
14	1999	18,451	76.98%	14,204	3.5067%	30.00%	$ 289.25	$ 3.04
15	1998	17,111	74.21%	12,698	3.1350%	30.00%	$ 349.22	$ 3.28
16	1997	13,907	71.00%	9,874	2.4378%	30.00%	$ 315.45	$ 2.31
17	1996	14,032	67.72%	9,502	2.3461%	30.00%	$ 312.23	$ 2.20
18	1995	15,030	64.21%	9,651	2.3827%	30.00%	$ 293.43	$ 2.10
19	1994	15,530	60.06%	9,327	2.3028%	30.00%	$ 315.14	$ 2.18
20	1993	19,813	55.95%	11,085	2.7369%	30.00%	$ 263.78	$ 2.17
21	1992	37,997	51.64%	19,622	4.8444%	30.00%	$ 228.10	$ 3.31
22	1991	13,976	47.42%	6,627	1.6362%	30.00%	$ 211.71	$ 1.04
23	1990	17,405	43.48%	7,568	1.8684%	30.00%	$ 216.57	$ 1.21
24	1989	19,993	39.94%	7,985	1.9715%	30.00%	$ 202.97	$ 1.20
25	1988	21,504	36.23%	7,791	1.9235%	30.00%	$ 191.76	$ 1.11
26	1987	20,828	32.47%	6,763	1.6697%	30.00%	$ 140.20	$ 0.70
27	1986	23,648	28.51%	6,742	1.6645%	30.00%	$ 162.78	$ 0.81
28	1985	25,437	24.62%	6,263	1.5462%	30.00%	$ 179.52	$ 0.83
29	1984	24,230	21.33%	5,168	1.2760%	30.00%	$ 162.07	$ 0.62
30	1983	19,842	18.57%	3,685	0.9097%	30.00%	$ 149.22	$ 0.41
31	1982	18,922	16.17%	3,060	0.7554%	30.00%	$ 147.26	$ 0.33
32	1981	24,345	13.42%	3,267	0.8066%	30.00%	$ 142.81	$ 0.35
33	1980	20,338	10.99%	2,235	0.5518%	30.00%	$ 129.97	$ 0.22
34	1979	19,676	8.85%	1,741	0.4299%	30.00%	$ 126.53	$ 0.16
35	1978	16,763	6.66%	1,116	0.2756%	30.00%	$ 129.68	$ 0.11
36	1977	13,090	4.95%	648	0.1600%	30.00%	$ 110.74	$ 0.05
37	1976	15,207	3.66%	557	0.1374%	30.00%	$ 108.40	$ 0.04
38	1975	15,130	2.69%	407	0.1005%	30.00%	$ 90.67	$ 0.03
39	1974	20,988	1.62%	340	0.0839%	30.00%	$ 75.23	$ 0.02
40	1973	26,523	1.14%	302	0.0746%	30.00%	$ 69.49	$ 0.02
41	1972	27,774	0.62%	172	0.0425%	30.00%	$ 64.08	$ 0.01
42	1971	27,780	0.41%	114	0.0281%	30.00%	$ 56.85	$ 0.00
43	1970	26,548	0.31%	82	0.0203%	30.00%	$ 53.54	$ 0.00
44	1969	21,771	0.21%	46	0.0113%	30.00%	$ 46.88	$ 0.00
45	1968	23,495	0.16%	38	0.0093%	30.00%	$ 44.68	$ 0.00

Information on rate calculation schedule:

45 year history in contract with attaching parties
Use data up through prior year
Poles installed refers to pole additions in CATS provided by Property Accounting
Iowa curve is agreed upon methodology to estimate surviving poles for each year
Surviving poles each year divided by total poles at year end gives % of poles from each year
Carrying charges for each year come from the Rate Department for 2012, 2011 and 2010.
Assume average of 3 years rate for 2009 and prior.
Pole cost is average of cost of all 35, 40 and 45 foot poles installed per estimate costs in WMS plus allocation of total clearing and grubbing costs for the year over total number of poles added per CATS less assumed depreciation rate of 48% based on data from Property Accounting.
Weighted average is carrying charges times the population % time the pole cost to get an average of costs for that year's poles. Sum of the average of the 45 years worth of poles is the current year rate.

Florida Power & Light Company
Calculation of Telecom Distribution Pole Attachment Rate
For The Year 2011, Based on 2010 Costs

Source: Rates Department

ITEM		Gross Plant	Depreciation Reserve	Net Plant
NET INVESTMENT PER POLE:				
Account 364 - Poles Towers & Fixtures		$963,700,331	(402,697,938)	$561,002,393
Less: Crossarms @	15%	144,555,050	(60,404,691)	84,150,359
Net Distribution Pole Investment		$819,145,282	(342,293,248)	$476,852,034
Number of Distribution Poles				1,156,901
Net Investment per Distribution Pole				**$412.18**
CAPITAL CARRYING CHARGE RATE:				
Depreciation Expense				7.04%
Administrative & General				1.71%
Operation & Maintenance				6.44%
Taxes				8.31%
Cost of Capital				7.07%
Total Capital Carrying Charge Rate				**30.57%**
Urbanized Service Area Allocation				**0.66**
NET COST OF BARE POLE				**$ 83.16**
SPACE FACTOR:				
Space Occupied by Attachment			1 ft	
Total Usable Space (2/3) *mandatory statue			0.667 ft	
Total Usable Space		13.5 ft		
Total Pole Height		37.5 ft		
Unusable Space			24 ft	
Number of Attaching Entities			5.0	
SPACE FACTOR				**0.112**
MAXIMUM ALLOWABLE RATE				**$9.3142**

* Assumption is that host utility would bare 1/3 of the ususable pole cost.

Florida Power & Light Company
Calculation of Telecom Distribution Pole Attachment Rate
For The Year 2011, Based on 2010 Costs

Source: Rates Department

ITEM		Gross Plant	Depreciation Reserve	Net Plant
NET INVESTMENT PER POLE:				
Account 364 - Poles Towers & Fixtures		$963,700,331	(402,697,938)	$561,002,393
Less: Crossarms @	15%	144,555,050	(60,404,691)	84,150,359
Net Distribution Pole Investment		$819,145,282	(342,293,248)	$476,852,034
Number of Distribution Poles				1,156,901
Net Investment per Distribution Pole				**$412.18**
CAPITAL CARRYING CHARGE RATE:				
Depreciation Expense				7.04%
Administrative & General				1.71%
Operation & Maintenance				6.44%
Taxes				8.31%
Cost of Capital				7.07%
Total Capital Carrying Charge Rate				**30.57%**
Urbanized Service Area Allocation				**1.00**
NET COST OF BARE POLE				**$ 126.00**
SPACE FACTOR:				
Space Occupied by Attachment			1 ft	
Total Usable Space (2/3) *mandatory statue			0.667 ft	
Total Usable Space		13.5 ft		
Total Pole Height		37.5 ft		
Unusable Space			24 ft	
Number of Attaching Entities			5.0	
SPACE FACTOR				**0.112**
MAXIMUM ALLOWABLE RATE				**$14.1124**

* Assumption is that host utility would bare 1/3 of the ususable pole cost.

Attachment E

FLORIDA POWER & LIGHT

CALCULATION OF Telecomm DISTRIBUTION POLE ATTACHMENT RATE

For the Year 2012 - Based on 2011 Costs

Source: Rates Department

NET INVESTMENT PER POLE:

		GROSS PLANT	DEPRECIATION RESERVE	NET PLANT
Account 364 - Poles, Towers & Fixtures		$1,015,460,284	$ (425,809,548)	$ 589,650,736
Less: Crossarms @	15%	152,319,043	(63,871,432)	88,447,610
Net Distribution Pole Investment		$ 863,141,241	$ (361,938,116)	$ 501,203,125
Number of Distribution Poles				1,158,906
Net Investment Per Distribution Pole				**$ 432.48**

CAPITAL CARRYING CHARGE RATE:

Depreciation Expense - Acct 364 - Poles, Towers & Fixtures	7.06%
A & G Expenses	1.64%
O & M Expenses	7.44%
Taxes	7.82%
Cost of Capital	6.65%
Total Capital Carrying Charge Rate	**30.61%**

UPPER BOUND RATE

Net Investment Per Distribution Pole	$ 432.48		
Total Capital Carrying Charge Rate	30.61%		
Urbanized Service Area Allocation	66.00%		
Net Cost of Bare Pole		**$**	**87.36**

SPACE FACTOR:

Space Occupied by Attachment	1.0	ft	
Total Unusable Space - Statutory Mandate	66.67%		
Total Usable Space	13.5	ft	
Total Pole Height	37.5	ft	
Unusable Space	24.0	ft	
Number of Attachments	5		
Space Factor			**0.112**
UPPER BOUND RATE			**$ 9.7848**

Attachment E

FLORIDA POWER & LIGHT

CALCULATION OF Telecomm DISTRIBUTION POLE ATTACHMENT RATE

For the Year 2012 - Based on 2011 Costs

Source: Rates Department

NET INVESTMENT PER POLE:

		GROSS PLANT	DEPRECIATION RESERVE	NET PLANT
Account 364 - Poles, Towers & Fixtures		$1,015,460,284	$ (425,809,548)	$ 589,650,736
Less: Crossarms @	15%	152,319,043	(63,871,432)	88,447,610
Net Distribution Pole Investment		$ 863,141,241	$ (361,938,116)	$ 501,203,125
Number of Distribution Poles				1,158,906
Net Investment Per Distribution Pole				**$ 432.48**

CAPITAL CARRYING CHARGE RATE:

Depreciation Expense - Acct 364 - Poles, Towers & Fixtures	7.06%
A & G Expenses	1.64%
O & M Expenses	7.44%
Taxes	7.82%
Cost of Capital	6.65%
Total Capital Carrying Charge Rate	**30.61%**

UPPER BOUND RATE

Net Investment Per Distribution Pole	$ 432.48		
Total Capital Carrying Charge Rate	30.61%		
Urbanized Service Area Allocation	100.00%		
Net Cost of Bare Pole		**$**	**132.37**

SPACE FACTOR:

Space Occupied by Attachment	1.0	ft	
Total Unusable Space - Statutory Mandate	66.67%		
Total Usable Space	13.5	ft	
Total Pole Height	37.5	ft	
Unusable Space	24.0	ft	
Number of Attachments	5		
Space Factor			**0.112**

UPPER BOUND RATE **$ 14.8255**

JOINT USE COST ANALYSIS
35' POLE VS. 40' POLE VS. 45' POLE
PRIVILEDGED AND CONFIDENTIAL - PREPARED AT DIRECTION OF COUNSEL IN PREPARATION FOR LITIGATION

	35'			40'			45'		
Data Year (To calculate rate used in subsequent year)	Pole Cost	Poles Installed	Cost Per Pole	Pole Cost	Poles Installed	Cost Per Pole	Pole Cost	Poles Installed	Cost Per Pole
2013	1,625,581	2,310	703.57	8,219,262	8,628	952.57	6,942,399	7,288	952.57
2012	1,735,474	2,541	683.08	8,822,929	10,164	868.08	6,412,619	6,113	1,049.08
2011	927,880	1,160	799.97	4,190,304	4,178	1,002.97	3,886,395	3,263	1,190.97
2010	1,363,060	1,835	742.79	5,564,564	5,934	937.79	4,847,613	4,356	1,112.79
2009	1,375,623	2,217	620.38	4,480,586	6,724	666.38	6,719,323	8,141	825.38
2008	1,933,224	2,891	668.76	6,332,890	8,811	718.76	5,530,365	6,380	866.76
2007	3,860,088	5,913	652.86	10,405,352	14,932	696.86	8,598,046	10,165	845.86
2006	3,738,937	5,963	627.02	15,033,560	22,404	671.02	8,982,290	10,954	820.02
2005	1,615,557	2,920	553.28	6,608,664	11,028	599.28	3,348,315	5,587	599.28
2004	1,292,908	2,201	587.43	4,895,869	7,917	618.43	3,753,519	4,654	806.43
2004 % of TOTAL (for application to 2001-2003)	13.00%	14.90%	29.19%	49.24%	53.59%	30.73%	37.75%	31.51%	40.08%
2003	3,222,816	4,008	804.11	12,203,877	14,416	846.54	9,356,356	8,476	1,103.88
2002	2,235,266	2,493	896.52	8,464,308	8,968	943.83	6,489,337	5,273	1,230.75
2001	2,670,306	2,791	956.72	10,111,681	10,039	1,007.20	7,752,330	5,903	1,313.39

				Increment Increase in Dollars ($)			Increment Increase in Percentage (%)		
				5' Increase		10' Increase	5' Increase		10' Increase
Cost per Pole Analysis	35'	40'	45'	35' vs 40'	40' vs 45'	35' vs 45'	35' vs 40'	40' vs 45'	35' vs 45'
2013	703.57	952.57	1,188.57	249.00	236.00	485.00	35.4%	24.8%	68.9%
2012	683.08	868.08	1,049.08	185.00	181.00	366.00	27.1%	20.9%	53.6%
2011	799.97	1,002.97	1,190.97	203.00	188.00	391.00	25.4%	18.7%	48.9%
2010	742.79	937.79	1,112.79	195.00	175.00	370.00	26.3%	18.7%	49.8%
2009	620.38	666.38	825.38	46.00	159.00	205.00	7.4%	23.9%	33.0%
2008	668.76	718.76	866.76	50.00	148.00	198.00	7.5%	20.6%	29.6%
2007	652.86	696.86	845.86	44.00	149.00	193.00	6.7%	21.4%	29.6%
2006	627.02	671.02	820.02	44.00	149.00	193.00	7.0%	22.2%	30.8%
2005	553.28	599.28	740.28	46.00	141.00	187.00	8.3%	23.5%	33.8%
2004	587.43	618.43	806.43	31.00	188.00	219.00	5.3%	30.4%	37.3%
2003	804.11	846.54	1,103.88	42.43	257.34	299.78	5.3%	30.4%	37.3%
2002	896.52	943.83	1,230.75	47.31	286.92	334.23	5.3%	30.4%	37.3%
2001	956.72	1,007.20	1,313.39	50.49	306.18	356.67	5.3%	30.4%	37.3%
			Average	95.00	197.00	292.00	13.2%	24.3%	40.5%
			Weighting				2.6%	4.9%	24.3%
			Weighted Average					31.8%	

Exhibit 2

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March 29, 1999

Mr. Thomas K. Kahn
Clerk, United States Court of Appeals
for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303-6147

Re: Gulf Power Co. v. United States,
No. 98-2403 (11th Cir.)

Dear Mr. Kahn:

By order dated March 5, 1999, this Court asked the parties to address the following question:

> Does 47 U.S.C. section 224, or any regulation issued pursuant to that provision, require a utility to provide access to its poles, ducts, conduits, or rights-of-way at a rate below which the utility considers to be just compensation at any time prior to a court determining the just compensation for that access?

We are submitting this letter brief in response to the Court's inquiry and to the letter brief filed by plaintiffs on March 22, 1999.

I. Summary.

Plaintiffs correctly state that § 224(f) imposes a duty on a utility to provide pole access (with certain exceptions). But § 224 and its implementing regulations do not by their own force require a utility to provide access at any particular rate.

The FCC has no general power to set pole attachment rates in the first instance. Its regulatory authority over such rates comes into play when a cable company files a complaint alleging that a rate charged by a utility is not just and reasonable. Thus, in the absence of an FCC adjudication, a cable company seeking pole access must pay the rate that the utility demands.

If the FCC adjudicates a complaint and determines that a pole attachment rate is not just and reasonable, the FCC may order the utility to charge a lower rate. The court of appeals, however, may stay the FCC's rate order pending judicial review. If the court enters such a stay, the cable company must continue to pay the rate that the utility demands, pending the outcome of judicial review. And if the court concludes that the rate set by the FCC is constitutionally inadequate, the court may enjoin the FCC from enforcing its rate order. As a consequence, the cable company would either have to forgo its right of attachment or else pay the rate that the utility demanded (unless and until the

FCC issued a new rate order consistent with the constitutional and statutory requirements). Thus, nothing in § 224 or the implementing regulations prevents a court from hearing a utility's constitutional challenge to a rate order before the rate order takes effect.

II. Argument.

1. As plaintiffs observe, § 224(f) requires utilities to provide pole access. Section 224(f) states: "A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it." Section 224(f) thus imposes a self-executing duty on utilities to provide access to their poles (with certain exceptions). Even in the absence of FCC action, a utility may not deny a cable company pole access.

2. Nothing in § 224, however, imposes a comparable duty on utilities to provide access <u>at a particular rate</u>.

Section 224(b) governs the FCC's authority to ensure that pole attachment rates are "just and reasonable." Section 224(b) does <u>not</u> give the FCC general authority to set pole attachment rates in the first instance; the FCC "is not empowered to prescribe rates, terms and conditions for CATV pole attachments generally." S. Rep. No. 95-580 at 15 (1977). Instead, "FCC

regulation will occur only when a utility or CATV system invokes the powers conferred [on the FCC] to hear and resolve complaints relating to the rates, terms, and conditions of pole attachments." Ibid. See also id. at 22 ("[t]he Commission's adjudicatory authority would not come into play until a complaining party has brought a matter to the Commission's attention"); id. at 15 (the Act "empower[s] the Federal Communications Commission to exercise regulatory authority oversight over the arrangements between utilities and CATV systems in any case where the parties are unable to reach a mutually satisfactory arrangement").

The FCC's regulations implement the "simple and expeditious CATV pole attachment program" that Congress envisioned. Id. at 21. Although plaintiffs suggest that the FCC has imposed a general obligation on utilities to charge particular rates, they simply misunderstand the isolated statement that they quote. See Pl. Letter Br. 8 (quoting an FCC statement that "a utility must charge an attachment rate that does not exceed the maximum amount permitted by the formula we have devised for such use").

In context, that statement is entirely consistent with Congress's expectation that FCC regulatory authority would come into play when a cable company filed a complaint with the FCC.

In making the statement that plaintiffs quote, the FCC cited 47 C.F.R. § 1.1404. That provision — which is entitled "Complaint" — sets out the allegations that a cable company must make in its complaint when it invokes the FCC's adjudicatory authority. The regulations make plain that the "formula" to which the FCC statement refers is the formula that the FCC will apply "[w]hen parties fail to resolve a dispute regarding charges for pole attachments and the Commission's complaint procedures under Section 1.1404 are invoked ***." 47 C.F.R. § 1.1409(e) (emphasis added). Thus, in the absence of an FCC adjudication on a complaint, a utility is under no obligation to charge a cable company any particular rate for pole access.[1]

Plaintiffs assert that they may not charge a rate above the statutory maximum, even in the absence of an unfavorable FCC adjudication, because no provision in the Pole Act expressly permits them to do so. See Pl. Letter Br. 5 ("[t]he Act and the FCC's regulations and orders are also devoid of any provision

[1] Plaintiffs note that, in deciding whether a utility's terms and conditions of pole attachment are just and reasonable, the FCC will treat a requirement that the cable company waive its statutory right to file a complaint with the FCC as per se unreasonable. See Pl. Letter Br. 8 n.7. That provision does not require the utility to accept any particular rate in the absence of FCC action, and plaintiffs' reliance upon it is inexplicable.

allowing a Power Company to charge what it believes is just compensation if that amount is higher than the statutory maximum"); id. at 8 (similar), id. at 9-10 (similar). This assertion gets the law exactly backwards. In the absence of a provision restricting the rates that the utilities may charge, the utilities are free to charge any rates they can command.

3. If a cable company files a complaint and the FCC determines that a rate is not just and reasonable, the FCC may order the utility to accept what the FCC determines to be a just and reasonable rate, and may order the utility to pay a refund. See 47 C.F.R. § 1.1410 ("Remedies"). Such an order can be stayed, however, to permit the court of appeals to hear the utility's constitutional challenge before the utility is required to comply with the order.

As an initial matter, the utility may ask the FCC to stay its rate order pending judicial review. The FCC clearly has the power to stay its own orders. See, e.g., 47 U.S.C. § 154(i) (the FCC "may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions"). Indeed, Rule 18 of the Federal Rules of Appellate Procedure provides that an application for a stay pending review of an

agency order should be made to the agency in the first instance. See Rule 18(a)(1) ("[a] petitioner must ordinarily move first before the agency for a stay pending review of its decision or order").[2]

Moreover, the court of appeals plainly has the power to stay the FCC's rate order pending judicial review – a proposition that plaintiffs do not and cannot dispute. Under 28 U.S.C. § 2349(b), "the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition." See also Rule 18(a)(2) of the Federal Rules of Appellate Procedure (setting forth the procedures for seeking a stay from the court of appeals). The statutory scheme thus incorporates the usual backstop against irreparable harm: the opportunity to obtain a stay.

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[2] As plaintiffs observe, see Pl. Letter Br. 8 & 5 n.5, an FCC regulation provides that if a utility attempts to remove a cable company's attachment, the cable company may file a "petition for temporary stay" with the FCC to prevent the utility from removing the attachment. See 47 C.F.R. § 1.1403(c), (d). Plaintiffs offer no basis, however, for their assertion that this regulation somehow overrides the FCC's statutory authority to issue other types of stays, including stays of its own rate orders. See Pl. Letter Br. 8.

If an FCC rate order is stayed, a utility is under no obligation to charge a cable company the rate prescribed in that order. Just as if the FCC had never acted, the cable company may not exercise its right of attachment unless it pays the rate that the utility demands.

If the court of appeals were to conclude that the rate set in the FCC's order was constitutionally inadequate, the court could enjoin the FCC from enforcing its rate order as applied in that case. See 5 U.S.C. § 706 (court has the power to "hold unlawful and set aside agency action *** found to be *** contrary to constitutional right"); 28 U.S.C. § 2342 (court of appeals may "enjoin, set aside, suspend (in whole or in part), or to determine the validity of *** all final orders of the Federal Communications Commission"). See also 28 U.S.C. § 2349(a) (similar). Indeed, plaintiffs acknowledge that if compensation is constitutionally inadequate, "the appropriate remedy is for the court to enjoin the taking ***." Pl. Letter Br. 11.[3]

If the court enjoined the FCC from enforcing its rate order, the utility would have no obligation to provide access at any particular rate. Thus, the cable company would be left with two

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[3] Per the Court's instructions, we are assuming for the sake of argument that § 224(f) effects a taking.

options: either forgo the right of access, or else pay the rate demanded by the utility (unless and until the FCC issued a new rate order consistent with the constitutional and statutory requirements).

* * *

In sum, § 224 and its implementing regulations do not prevent a court from hearing a utility's constitutional challenge to an FCC rate order before the utility is required to comply with that order.

Respectfully submitted,

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Exhibit 3